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Report of

# The Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement

July 2016

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**Report of**

# **The Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement**

**July 2016**

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# The Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement

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Hon. LaDoris H. Cordell	Hon. Cruz Reynoso	Hon. Dickran M. Tevitzian	
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Anand Subramanian		Jerome C. Roth	
Counsel Working Groups			
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## **Glossary of Terms**

- **ACLU** – American Civil Liberties Union
- **AIM** – Administrative Investigations Management
- **BWC** – body-worn camera
- **CABLE** – Computer Assisted Bay Area Law Enforcement system
- **CDW** – Crime Data Warehouse system
- **CJSC** – California Department of Justice's Criminal Justice Statistics Center
- **Compstat** – SFPD computer statistics
- **COPS** – DOJ's Office of Community Oriented Policing Services
- **CUAV** – Community United Against Violence
- **DA** – San Francisco District Attorney
- **DB** – SFPD department bulletin
- **DGO** – SFPD department general order
- **DOJ** – U.S. Department of Justice
- **DHR** – San Francisco Department of Human Resources
- **EIS** – Early Intervention System
- **FBI** – Federal Bureau of Investigation
- **FI** – field interview
- **IAD** – Internal Affairs Division
- **LAPD** – Los Angeles Police Department
- **LGBT** – lesbian, gay, bisexual, and transgender
- **MOU** – memorandum of understanding
- **NAACP** – National Association for the Advancement of Colored People
- **NYPD** – New York Police Department
- **OCC** – San Francisco Office of Citizen Complaints
- **OIS** – officer-involved shooting
- **OFJ** – Officers for Justice
- **OIG** – Office of Inspector General
- **OPD** – Oakland Police Department
- **PAL** – Police Activities League
- **PEG** – Police Employee Group
- **POA** – San Francisco Police Officers' Association
- **POBR** – California Public Safety Officers Procedural Bill of Rights
- **POST** – California Commission on Peace Officer Standards and Training
- **PRA** – California Public Records Act
- **SFPD** – San Francisco Police Department
- **SFSO** – San Francisco Sunshine Ordinance

- **SOTF** – San Francisco Sunshine Ordinance Task Force
- **SPU** – Special Prosecutions Unit
- **UCR** – Uniform Crime Reports

# Contents

<b>Introduction . . . . .</b>	<b>1</b>
Background . . . . .	3
Panel Scope and Structure . . . . .	5
Investigatory Process and Methodology . . . . .	6
SFPD Overview and General Recommendations . . . . .	13
Community Perspectives . . . . .	17
<b>Chapter 1: Stops, Searches, and Arrests . . . . .</b>	<b>23</b>
Background . . . . .	23
Findings . . . . .	27
Recommendations . . . . .	42
<b>Chapter 2: Personnel . . . . .</b>	<b>49</b>
Background . . . . .	49
Findings . . . . .	54
Recommendations . . . . .	59
<b>Chapter 3: Use of Force and Officer-Involved Shootings . . . . .</b>	<b>61</b>
Background . . . . .	61
Findings . . . . .	67
Recommendations . . . . .	73
<b>Chapter 4: Internal Discipline . . . . .</b>	<b>85</b>
Background . . . . .	85
Findings . . . . .	89
Recommendations . . . . .	94
<b>Chapter 5: External Oversight . . . . .</b>	<b>99</b>
Background . . . . .	99
Findings . . . . .	100
Recommendations . . . . .	118
<b>Chapter 6: <i>Brady</i> Policies and Practices . . . . .</b>	<b>123</b>
Background . . . . .	123
Findings . . . . .	129
Recommendations . . . . .	133

<b>Chapter 7: Culture</b>	137
Background	137
Findings	138
Recommendations	148
<b>Chapter 8: Crime Data</b>	151
Background	151
Findings	153
Recommendations	155
<b>Appendix A: List of All Findings and Recommendations</b>	156
Findings	156
Recommendations	159
<b>Appendix B: A Timeline of San Francisco Police Department Incidents and Calls for Reform</b>	163
<b>Appendix C: Government Motion Containing Textgate Messages</b>	168
<b>Appendix D: List of Selected Panel Interviewees</b>	177
<b>Appendix E: Selected Correspondence Related to SFPD Cooperation with the Panel</b>	180
<b>Appendix F: Proposed Bulletin from Panel to SFPD</b>	193
<b>Appendix G: Panel Public Records Act Request</b>	194
<b>Appendix H: SOTF Order of Determination</b>	202
<b>Appendix I: Draft MOU on Use of Force and OIS Investigations</b>	204
<b>Appendix J: DA's Internal <i>Brady</i> Policy</b>	211
<b>Appendix K: DA's External <i>Brady</i> Policy</b>	224
<b>Appendix L: SFPD's <i>Brady</i> Policy</b>	232

# Introduction

The Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement (the Panel) was established as an advisory body to the San Francisco District Attorney in May 2015 in the wake of revelations that 14 San Francisco Police Department (SFPD) officers had exchanged numerous racist and homophobic text messages. The text messages—milder examples of which included statements such as “Cross burning lowers blood pressure! I did the test myself!” and “I still hate black people”—expressed blatant hostility toward and mocked people of color—including SFPD officers—and insulted lesbian, gay, bisexual, and transgender (LGBT) people.

The Panel was tasked with answering the critical and obvious question that the text-messaging scandal raised and—to the Panel’s knowledge—no other city agency had investigated: Was the racial and homophobic bias so clearly demonstrated by the offensive texts a reflection of institutionalized bias within the SFPD and, if so, to what extent?

Over a one-year period, the Panel examined a number of different aspects of the SFPD to try to develop a comprehensive understanding of the issue, interviewing more than 100 witnesses and reviewing thousands of public documents. The result is this report. Its findings and recommendations strive to give credit where credit is due, but point to several unmistakable conclusions: the SFPD is in need of greater transparency; lacks robust oversight; must rebuild trust with the communities it serves; and should pay greater attention to issues of bias against people of color, both officers and members of the public. In short, the Panel concludes that the SFPD is in urgent need of important reforms.

The report is also timely. Since the creation of the Panel, several incidents involving the SFPD have significantly increased tensions in San Francisco, underscoring the need for transparency, oversight, and reform. In April 2016, a second texting scandal involving four additional officers using racist language came to light. Notably, like the first texting scandal, the second was discovered only through an unrelated criminal investigation of one of the officers involved—raising the question of whether officers not under criminal investigation have engaged in or been disciplined for similar behavior. Also notable is that texts from the second scandal explicitly refer to the first texting scandal in jest, suggesting that efforts by departmental leadership to emphasize the gravity of the first scandal were lost on at least a subset of the officers most in need of intervention.

The deaths of Mario Woods in December 2015 and Luis Gongora in April 2016 in officer-involved shootings—following similar officer-involved shootings leading to the deaths of Alex Nieto and Amilcar Perez-Lopez in the months prior—also significantly raised tensions.<sup>1</sup> These tensions manifested in numerous ways, including sustained protests by groups such as the Justice for Mario Woods Coalition and the Justice for Alex Nieto Coalition at various SFPD-hosted town halls and Police Commission meetings, a prolonged hunger strike by community members nicknamed the “Frisco 5,” and several protest marches.

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<sup>1</sup> See Chapter 3: Use of Force and Officer-Involved Shootings for more on officer-involved shootings



Shortly after the Mario Woods shooting, the United States Department of Justice's Office of Community Oriented Policing Services (COPS) agreed to conduct a collaborative review of the SFPD at the request of San Francisco Mayor Ed Lee and Greg Suhr, who was SFPD Chief of Police at the time.<sup>2</sup> The Panel met with the COPS review team to share information about the scope, processes, and goals of each entity's investigation.

Additional incidents highlighting the need for reform continued to arise throughout the Panel's investigation. On May 13, 2016, a federal judge dismissed a criminal case that had been investigated by the SFPD, finding that video evidence contradicted SFPD statements and incident reports. According to the judge, "The video was unequivocal in rebutting everything the police officer testified to—at least to all the pertinent details."<sup>3</sup> On May 19, 2016, another officer-involved shooting in the Bayview neighborhood resulted in the death of Jessica Williams, an unarmed 29-year-old Black woman. Following this incident, Chief Suhr resigned at the request of Mayor Lee. Deputy Chief Toney Chaplin was named Interim Chief.

This report presents findings and recommendations based exclusively on a local review of the SFPD. It cannot, however, be divorced from broader issues surrounding law enforcement accountability nationwide. Across the country, evidence of instances of questionable police conduct—including cellphone and dash-camera footage of seemingly avoidable officer-involved shootings, local police officers using military gear and aggressive tactics, and the deaths of citizens while in law enforcement custody—has given rise to a national debate and eroded trust between some communities, primarily communities of color, and their police departments. Questions about transparency, accountability, and fairness in law enforcement have intensified, as have attempts to address those concerns, including the formation of President Obama's Task Force on 21<sup>st</sup> Century Policing.<sup>4</sup> (See Appendix A for a complete list of the Panel's findings and recommendations.)

While the incidents that triggered this review of the SFPD were demonstrations of explicit, individual biases, it is important to distinguish institutionalized or systemic bias—the focus of this report—from individual bias. Bias may be institutionalized when it is promoted, condoned, or acquiesced to by an institution's policies, practices, and/or culture, giving rise to a tendency to produce patterns of differential outcomes. Such bias is especially concerning when it results in unjust outcomes for historically marginalized groups (e.g., groups defined by race, ethnicity, gender, or sexual orientation). The Panel's investigation and report focus on the SFPD as an institution. The report does not attempt to evaluate the conduct or performance of individual officers.

Fiscal concerns, which are similarly outside the scope of this report, must also be considered in any conversation about reform. Is the current budgetary investment in the SFPD yielding intended outcomes? Is the SFPD spending money effectively? What monitoring should the department's use of resources be subject to?

Holding any institution under a microscope will inevitably reveal less-than-perfect policies and practices. Public institutions, however, benefit from regular and consistent review and oversight. And law enforcement organizations must be held to a heightened standard based on their responsibility to maintain public safety—an obligation that necessitates building trust with every community. Special scrutiny of law enforcement organizations is also appropriate because of the immense power police officers hold over citizens, from the authority to act as agents of the law to the ability to lawfully end lives, and because of the potential for abuse of those powers.

Over the past year, Mayor Lee has announced plans to fund police training, violence prevention, and other reforms through the city budget. The Panel is hopeful that any reforms address the institutional issues described in this report. It is also important that the resignation of Chief Suhr not be seen as

2 See <http://www.cops.usdoj.gov/Default.aspx?Tab=150> for more information about the COPS collaborative reform model.

3 Jonah Owen Lamb, *Feds Drop Gun Charges after Video Shows Officer Lied*, S.F. Examiner (May 13, 2016), [www.sfgate.com/feds-drop-gun-charges-video-shows-officer-lied](http://www.sfgate.com/feds-drop-gun-charges-video-shows-officer-lied).

4 See <http://www.cops.usdoj.gov/policing/tf21c/> for more information about the President's Task Force on 21st Century Policing.

sufficient to address these issues. The SFPD has an unfortunate history of troubling incidents, followed by outside reviews of the department leading to reports and recommendations that are not implemented.<sup>5</sup> The Panel encourages the Mayor, Police Commission, Board of Supervisors, and others in city leadership to make a public commitment to consider the recommendations presented in this report and to provide the public with regular updates on the status of adoption or implementation of the recommendations. Further, the Panel hopes that the California Attorney General and the United States Department of Justice will take into account the report's findings and recommendations in their review and oversight of the SFPD.

It is common sense that a law enforcement agency "can have the best policies in the world, but if [its] institutional culture doesn't support them, they won't work."<sup>6</sup> The next SFPD chief must have the vision and leadership skills to address the department's institutional culture—he or she must have the dedication to implement 21<sup>st</sup> century policing best practices, hold regular and meaningful dialogue with diverse community stakeholders, and demand accountability from the top down. An organizational environment must be developed that encourages a compassionate and professional work ethic while earning and maintaining the respect of all officers and staff. The Police Commission has done well to ensure that community input is incorporated in its development of departmental policy—it should consider a mechanism for community input in identifying its candidates to be the next chief.<sup>7</sup> Further, to help rebuild trust with the community, the Mayor should consider hiring a candidate with an unassailable record.<sup>8</sup>

Although this report examines some of the SFPD's shortcomings and the areas in which the department can potentially improve, the Panel acknowledges the work of the many fine SFPD officers who do an excellent job every day, serving their communities with distinction, dignity, and respect. This report does not seek to overlook, trivialize, or undermine their dedication, sacrifices, or hard work.

The findings and recommendations in this report are merely a starting point. Addressing any institutionalized bias will ultimately depend on the commitment of SFPD leadership, civic leaders, and the community as a whole. The Panel is hopeful that its recommendations will assist that process. There can be no question that the time to address these issues is now.

## Background

In late 2014, three former SFPD officers were convicted in federal district court in San Francisco on corruption charges related to their illegal entry into hotel rooms in low-income areas and theft from occupants. In March 2015, federal prosecutors filed a motion to deny bail pending appeal to one of these convicted officers, former Sergeant Ian Furminger. Offered as character evidence, the filing revealed that Furminger and fellow SFPD officers had sent and received dozens of blatantly racist and homophobic text messages between October 2011 and June 2012. Days after the publicly accessible motion was filed, San Francisco media outlets began to investigate and publish stories about the texts—now dubbed "Textgate"—eventually reporting that up to 14 SFPD officers had sent or received the bigoted messages.

The text messages were extremely disturbing. A sampling of the messages follows, reprinted only to offer complete context for this report.<sup>9</sup> (**Warning:** the texts contain offensive and upsetting language, including the "N-word.")

5 See Appendix B for a brief timeline of these incidents.

6 Police Executive Research Forum, An Integrated Approach to De-Escalation and Minimizing Use of Force (Aug. 2012), [http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/Using\\_Understanding\\_20minimizing\\_20use\\_20of\\_20force\\_202012.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series/Using_Understanding_20_minimizing_20use_20of_20force_202012.pdf), page 33.

7 According to the San Francisco City Charter, the Police Commission selects a pool of three candidates for SFPD Chief, from which the Mayor makes the final hire. See Chapter 5: External Oversight for more on the Police Commission.

8 A repeated community criticism of former Chief Suhr heard by the Panel during its investigation was his record of conduct and management decisions. See Sylvia Rorem, Mayor Ed Lee: Fire Police Chief Gregory P. Suhr Now!, S.F. Bayview (Apr. 25, 2016), <http://sfbayview.com/2016/04/Mayor-ed-lee-fires-police-chief-gregory-p-suhr-now/>, and Julia Carrie Wong, The Many Scandals of Police Chief Greg Suhr, S.F. Weekly (Dec. 16, 2015), <http://www.sfweekly.com/san-francisco/the-many-scandals-of-police-chief-greg-suhr/>.

9 The texts released in the Government's motion are included as Appendix C of this report.

- Original text: "Do you celebrate qauanza [sic] at your school?"
  - Response from officer: "Yeah we burn the cross on the field! Then we celebrate Whitemas. It's worth every penny to live here away from the savages."
- "Those guys are pretty stupid! Ask some dumb ass questions you would expect from a black rookie! Sorry if they are your buddies!"
- "The buffalo soldier was why the Indians Wouldn't shoot the niggers that fought for the confederate. They thought they were sacred buffalo and not human. They were not far off Marley was a nigger."
- "Ha! We stole [C]alifornia from the [M]exicans too! Would have had Baha [sic] too but felt it wasn't worth it."
- "Gunther Furminger was a famous slave auctioneer."
- "I can't imagine working At costco and hanging out with filthy flips. hate to sound racist but that group is disgusting."
- "White Power Family, [Furminger home address redacted]"
- "I still hate black people."
- "I'm just leaving it like it is, painting KKK on the sides and calling it a day!"
- "Cross burning lowers blood pressure! I did the test myself!"
- "All niggers must fucking hang"
- Original text from officer: "Just boarded train at Mission/16th"
  - Response from second officer: "Ok, watch out for [Black males]"
  - Original texting officer: "Too late. I'm surrounded. And the only gun I have is broken!"
  - Response from second officer: "Your [sic] fucked"
  - Original texting officer: "Dumb nig nugs."
- "Busted up but that's [sic] what happens to fags!"
- Original text from officer: "I hate to tell you this but my wife [sic] friend is over with their kids and her husband is black! If is an Attorney but should I be worried?"
  - Response from second officer: "Get ur [sic] pocket gun. Keep it available in case the monkey returns to his roots. Its [sic] not against the law to put an animal down"
  - Original texting officer: "Well said!"
  - Response from second officer: "U [sic] may have to kill the half breed kids too. Don't worry. Their [sic] an abomination of nature anyway."
- Original text: "Dude. Your boy made Q50. Sgt. Aj Holder"
  - Response from officer: "Fuckin nigger"

San Francisco District Attorney (DA) George Gascón first learned about the texts by reading media accounts in March 2015. The DA indicated that he believed the incident raised serious questions about the fair administration of justice in San Francisco, including the following.

- Did the racial and homophobic biases evidenced by the texts affect the officers' interactions with people of color and members of the LGBT community?
- Were prior arrests made by these officers motivated by bias?
- Had the SFPD failed in its obligation to notify the DA when officers engage in conduct that implicates *Brady v. Maryland*, a landmark 1963 United States Supreme Court case mandating the disclosure of potentially exculpatory evidence to criminal defendants? The texts demonstrating bias unambiguously

qualified as *Brady* material and the SFPD had learned about them as early as December 2012, close to two and a half years before the DA found out through the media.<sup>10</sup> Who within the SFPD knew about the texts and when? Why was the DA not immediately notified about these officers through the SFPD's *Brady* process?

- Was there institutionalized and systemic bias within the SFPD? Was biased conduct limited to these 14 officers? Did the SFPD's culture contribute to the officers' decisions to engage in this conduct? Were there ways in which SFPD policies and/or practices generally led to biased outcomes?

After Textgate became public, city leaders—including the Chief of Police, the President of the Police Commission, and the President of the Police Officers' Association (POA)—uniformly condemned the texts. No public follow-up inquiry was conducted by any agency, however. In fact, no city, state, or federal agency announced plans to conduct an investigation into the incidents or to analyze whether they were indicative of institutional issues within the SFPD.

The DA determined that, in the absence of investigations by other authorities—and to maintain the integrity of law enforcement in the city and permit him to fulfill his oath to uphold the laws of the State of California—he believed he had the responsibility to initiate a thorough inquiry to investigate and address potential bias in the SFPD. After a request to fund the DA's Trial Integrity Unit to conduct a broader investigation was denied by the Mayor,<sup>11</sup> and after the U.S. Department of Justice declined to accept the DA's request for a "patterns and practices" audit of the department, the DA decided to establish the Panel as an independent advisory body to review the issue of whether bias was institutionalized in the SFPD and to provide recommendations to address any problems related to bias that it found.

## Panel Scope and Structure

Modeled loosely on the Los Angeles County Citizens' Commission on Jail Violence, the Panel is composed of three former judges with decades of experience in law enforcement oversight, all based outside of San Francisco to ensure neutrality.

- Judge LaDoris Hazzard Cordell was a California Superior Court judge in Santa Clara County, was the Independent Police Auditor for the City of San Jose, and recently chaired the Blue Ribbon Commission on Improving Custody Operations that investigated jail practices in San Jose.
- Justice Cruz Reynoso, in addition to his service on the California Supreme Court, was the Vice Chair of the U.S. Commission on Civil Rights for more than 10 years, and is a recipient of the Presidential Medal of Freedom, the country's highest civilian honor.
- Judge Dickran M. Tevrizian was a judge on the U.S. District Court for the Central District of California and served on the LA County Citizens' Commission on Jail Violence, which investigated the Los Angeles Sheriff's Department. He was also the Vice Chair of the LA County Blue Ribbon Commission on Child Protection that investigated failures in the foster care system and recommended reforms.

Each of these distinguished former jurists agreed to serve on the Panel on a pro bono basis. The Panel's Executive Director, Anand Subramanian, was engaged through PolicyLink, a nonprofit research and advocacy organization with expertise in community-centered policing.<sup>12</sup> The Panel's General Counsel, Jerome C. Roth, of the law firm Munger, Tolles & Olson, also agreed to serve on a pro bono basis.

10 See Chapter 6: *Brady* Policies and Practices for more detail.

11 See Alex Emslie, *No Funding for DA's Police Misconduct Task Force in S.F. Mayor's Budget*, KQED News (June 2, 2015), [www.kqed.org/news/2015/06/02/no-funding-for-das-police-misconduct-task-force-in-sf-mayors-budget](http://www.kqed.org/news/2015/06/02/no-funding-for-das-police-misconduct-task-force-in-sf-mayors-budget).

12 PolicyLink received a grant from the Open Society Foundation and a donation from Denise Foderaro to facilitate the Panel—no public money was used for that purpose.

Several respected law firms with extensive experience in conducting internal investigations were retained by the Panel on a *pro bono* basis. These firms formed working groups to conduct inquiries into issue areas relevant to the potential for institutionalized bias:

- Stops, Searches, and Arrests
- Personnel
- Use of Force and Officer-Involved Shootings
- Internal Discipline
- External Oversight
- *Brady* Policies and Practices
- Culture
- Crime Data

The Panel was tasked with two related goals to be completed on independent tracks.

1. The DA's fundamental responsibility is to advance justice—an impossible task without reliable evidence provided by law enforcement. The three judges comprising the Panel were asked to review police reports authored by the officers involved in Textgate for indications to determine whether their demonstrated bias may have played a role in their policing. For this task, the judges have been supported by law students at five law schools and one law firm on a *pro bono* basis to review almost 4,000 police reports compiled by the involved officers. The judges' priority is to review all reports that the student and attorney volunteers identify as potentially problematic. This review is ongoing and is expected to be completed by fall 2016. The Panel is also reporting to the DA on prosecutions that may need revisiting based on the outcome of its review.<sup>13</sup>
2. The law firm working groups were tasked with examining the extent to which bias was institutionalized within the SFPD's policies and practices, and to recommend solutions to address any bias or threat of bias they discovered. The results of this broader inquiry form the chapters of this report.

Although the DA initiated the Panel as an advisory body and his office provided input and information to it, the Panel was asked to operate, and has operated throughout its existence, as an independent entity. The DA did not control the Panel's decisions or processes, including the ways the law firm working groups conducted their investigations or the drafting of findings and recommendations contained in this report. The Panel's independence and self-direction were considered essential to ensure that the findings in this report were objective and actionable.

## Investigatory Process and Methodology

### Working Group Investigations and Public Hearings

The law firm working groups developed and employed robust processes for their investigations. They formulated investigation plans that identified witnesses and documents relevant to each topic of inquiry and implemented specific interview protocols that provided for sharing of information with each group before and after interviews. By the end of their investigations, the working groups had interviewed more than 100 witnesses, including the Chief of Police, current and former SFPD officers and employees, every sitting police commissioner, numerous former police commissioners, high-level city officials, staff from a number of city agencies, policy and law enforcement experts, and community leaders.<sup>14</sup> The groups also

<sup>13</sup> The DA's office also conducted a preliminary review of these incident reports to assess whether any of the criminal cases required reconsideration based on the officers' now-known bias. To date, the DA has reopened and dismissed 16 cases. The DA may also evaluate the judges' review to examine whether any lessons or best practices can be garnered to assess future incident reports for bias.

<sup>14</sup> A partial list of witnesses interviewed by the working groups can be found in Appendix D.

reviewed and analyzed thousands of pages of documentary evidence, including publicly available policies, procedures, and reports, and additional documents and data requested from relevant public agencies.

As an independent advisory body, the Panel did not have any power to compel testimony or subpoena documents. All interviews were voluntary. Working groups received periodic feedback from the judges on their investigations, as well as from Veritas Assurance Group, a consulting firm specializing in law enforcement practices retained by the Panel through a donation to PolicyLink.

The Panel also held five hearings that were open to the public. At the first public hearing, held on December 15, 2015, the working groups updated the judges on their investigative plans and progress and received feedback. The second and third hearings, held on January 14, 2016, and February 22, 2016, respectively, were devoted to taking public testimony from key witnesses. The working groups determined which witnesses to call and conducted the initial questioning of each witness, after which the Panel's judges also questioned the witnesses. The following witnesses presented at these hearings:

- Jeff Adachi, San Francisco Public Defender
- George Gascón, San Francisco District Attorney
- Jeff Godown, former SFPD Interim Chief of Police
- Joyce M. Hicks, Director of the Office of Citizen Complaints
- Tonia Lediжу, Audit Director at the Office of the Controller
- Suzy Loftus, Police Commission President
- Allison Macbeth, Assistant District Attorney
- Dr. Joe Marshall, Police Commissioner
- Lt. Joe Reilly, Secretary to the Police Commission (Ret.)
- Greg P. Suhr, former SFPD Chief of Police
- Rev. Arnold Townsend, Vice President of the San Francisco NAACP
- Sergeant Yulanda Williams, President of Officers for Justice
- Rebecca Young, Assistant Public Defender

The Panel's fourth hearing, held on March 21, 2016, in the Bayview, was devoted exclusively to community feedback and perspectives. At its fifth and final hearing, held on May 9, 2016, the Panel's working groups presented preliminary findings and recommendations for consideration and feedback by the public before finalizing its report.

### **Efforts to Secure Officer Interviews through the SFPD**

As an autonomous body made up of judges assisted by law firms, the Panel hoped and expected to secure broad cooperation from the SFPD, including full access to officers for interviews and departmental documents. As detailed below, the Panel did not always receive the cooperation it hoped for from the SFPD management and the union that represents most officers, the San Francisco POA.

Former Chief Suhr told the Panel in an October 5, 2015, response letter that:

As part of our commitment to the recommendations of the President's Task Force on 21st Century Policing, especially in regard to Pillar One: Building Trust and Transparency, the Police Department supports the efforts of the panel. We are happy to provide documentation and interviews at the request of the panel as practicable.<sup>15</sup>

The letter from October 5 asked that "requests for information and/or scheduling of interviews" be directed to Deputy Chief Hector Sainez.

<sup>15</sup> Selected correspondence referenced in this section of the report is included in Appendix E.

On October 23, 2015, the Panel's Executive Director contacted Suhr and Sainez, requesting a number of documents and advising them that the working groups had compiled a list of officers they wanted to interview and would soon be reaching out to schedule the interviews. On November 6, 2015, Suhr sent a letter to the DA, asking for clarification on various aspects of the Panel's scope and authority. The letter questioned whether the Panel was investigating misconduct of individual members of the SFPD. In that regard, Chief Suhr invoked processes and rights officers possess in the context of disciplinary investigations, including advising the Panel to schedule interviews through officers' labor groups, such as the POA. The DA and Panel responded to the November 6 letter in separate letters dated November 12, 2015, addressing Suhr's concerns and clarifying that the Panel was not investigating any specific incidences of alleged misconduct by SFPD officers.

On November 16, 2015, counsel for the POA sent a letter to the DA, representing that Suhr's letter of November 6 raised concerns about the procedural rights of officers for the POA, and also requesting that the Panel schedule interviews with SFPD officers through the POA to protect the rights of officers under investigation. Counsel to the Panel responded to the POA's counsel on November 25, 2015, advising him that scheduling interviews through the POA was not necessary, given that interviews were not related to misconduct and were entirely voluntary—not compelled by or related to an investigation of individual officers.

On November 18, 2015, the Panel's Executive Director emailed Suhr, expressing hope that the letters of November 12 cleared up any misunderstandings regarding the Panel's authority, scope, and goals, and that this would allow the Panel's officer interviews to proceed through the department. Suhr responded on November 30, 2015, suggesting that because officer participation would be voluntary, the Panel should still schedule interviews through the POA or other relevant labor associations. Due to its preference for candid, unvarnished officer testimony free from the influence of any advocacy group, including the POA, the Panel decided to request interviews of officers directly, rather than attempt to schedule interviews through the POA. The Panel shared this decision with Suhr in a letter dated December 8, 2015. Over the following week, the Panel's working groups reached out to several SFPD officers and staff to attempt to schedule interviews.

Counsel to the Panel met with counsel to the POA on December 16, 2015, and assured the POA that the Panel would not be investigating the conduct or performance of individual officers (including officers involved in Textgate), did not intend to name individual officers in its report, and wanted POA leadership to be among those interviewed.

The POA issued a bulletin through the department dated December 15, 2015 (but posted on December 18, 2015) to all SFPD officers.<sup>16</sup> The bulletin stated:

District Attorney George Gascón has created a 'Blue Ribbon Commission [sic] on Fairness & Accountability in Law Enforcement' to investigate whether the text messages involving approximately 12 officers, which are currently the subject of disciplinary and court proceedings, reflect institutionalized bias in the San Francisco Police Department. The POA rejects this premise, but is committed to working with the Commission to ensure that it accurately portrays our department.

It has come to the POA's attention that the Commission is contacting POA members directly and asking them to appear for interviews. The Commission is doing so despite both the Chief of Police and the POA requesting that any contact of POA members be made through the POA.

In our exchanges with the Commission, we have confirmed that it has no delegated authority from either the City or the District Attorney. Any interview is therefore entirely voluntary. If you are contacted by the Commission and asked to attend an interview, we advise you to contact the POA as soon as possible.

<sup>16</sup> According to a current SFPD officer, the bulletin was distributed to all officers at lineup on December 18, 2015.

Counsel to the Panel responded to counsel to the POA, pointing out inaccuracies in the POA's bulletin and noting that the bulletin appeared likely to dissuade officers from participating in interviews. Counsel to the Panel asked the POA to revise its guidance to clearly encourage cooperation and to circulate a revised bulletin that counsel to the Panel drafted in order to provide SFPD officers clear and important information about the Panel.<sup>17</sup> To the Panel's knowledge, the POA did not revise its December 15 bulletin and did not circulate the Panel's proposed bulletin.

The Panel believes that the POA's bulletin ultimately did discourage officers from accepting interviews with the Panel. Witnesses stated that the POA's blanket rejection of what it labelled the Panel's "premise" created a negative perception of the Panel as having prejudged the issue with an unjustified assumption about the SFPD and its officers. The Panel further believes that the POA's advice that officers inform it of any interview request had a chilling effect upon officers' willingness to participate in interviews. Indeed, at the time the bulletin was distributed, an SFPD officer informed members of a Panel working group that officers interpreted the bulletin as a command to call the POA before scheduling interviews with Panel attorneys—that witness perceived that officers were afraid to talk to the Panel because of the POA's bulletin.

On January 20, 2016, the POA sent a letter to Sergeant Yulanda Williams—the President of Officers for Justice (the Black officer affinity group), who herself had been targeted by one of the Textgate texts—after she gave public testimony to the Panel in which she described her perceptions of institutionalized bias in the SFPD. The POA also published the letter in its public journal and sent the letter to its more than 2,000 members.<sup>18</sup> The letter's author—POA President Martin Halloran—stated that he found her "testimony to the Panel to be largely self-centered and grossly unfair." According to Williams, she felt "unsafe on patrol" after the POA published this letter, stating that she viewed the letter as "a personal attack against me and my constitutional rights of freedom of speech.... It sends a clear message that when you go against what they believe in you are then considered an outsider, an outcast and they attempt to slander your name."<sup>19</sup>

Several officers informed one Panel working group that officers with views on bias contrary to the POA's views were deterred from participating in interviews by the risks to their professional future, including their position within the department, and, in some cases, their personal safety. For example, one Black officer who initially scheduled an interview with the group canceled it, then rescheduled, then finally canceled again. This potential witness had previously stated on the phone that he feared that speaking out would severely damage his professional career in the SFPD.

In January 2016, former Chief Suhr agreed to be interviewed by the Panel. He was interviewed by counsel to the Panel—first, in a private interview on February 2, and second, at the Panel's public hearing held later that month. In mid-March 2016, after having initially declined to make officers available for interviews while on duty, Suhr agreed to arrange interviews with certain subject-matter expert officers and staff from the department, including officers and staff from the Internal Affairs Division (IAD), the Technology Division, the *Brady* Unit, and from human resources.

The Panel also began working with the POA to schedule interviews of officers after very few officers responded to direct invitations from working groups. After a series of emails between the Panel and counsel to the POA in December 2015 and early 2016, the POA made members of its leadership—including its President, Sergeant Martin Halloran—available to interview with working groups. The POA also suggested and arranged several interviews of SFPD officers. Each of these interviews was monitored by a POA attorney. The POA did not, however, arrange all interviews that working groups requested. On multiple occasions, counsel for the POA indicated that experts in use of force were available for interviews only to subsequently cancel the interviews.

<sup>17</sup> The Panel's proposed bulletin is attached as Appendix F.

<sup>18</sup> See Letter from Martin Halloran, SFOA Pres., to Yulanda Williams, Pres. Officers for Justice (Jan. 20, 2016), [https://sfoaj.org/journal\\_archives/POAJournal\\_February2016.pdf](https://sfoaj.org/journal_archives/POAJournal_February2016.pdf), p. 6.

<sup>19</sup> Jonah Owen Lamb, *Police Union Targets Black Officer for Vocal Critique of Racism in the Department*, S.F. Examiner (Feb. 1, 2016), <http://www.sfxaminer.com/police-union-targets-black-officer-for-vocal-critique-of-racism-in-the-department/>.

The Panel invited Sergeant Halloran to give testimony at a public hearing on two occasions. He was first invited to testify at the February 2016 public hearing. Despite having initially indicated that he was available on that date, Sergeant Halloran declined to testify, citing undisclosed scheduling conflicts. Through his counsel, Sergeant Halloran subsequently cited the fact that he would not be able to be questioned by a POA attorney as the primary reason he declined. Sergeant Halloran was then asked to provide testimony at the following hearing, scheduled for March 21, 2016. Sergeant Halloran's counsel indicated that he would not be able to attend that hearing either, citing various travel plans.

Counsel to the POA sent a letter on March 29, 2016, asking to permit additional witnesses selected by the POA to give public testimony to the Panel. Having already conducted working group interviews of these witnesses and having no further plans for public hearings with witness testimony, the Panel declined.

Ultimately, the Panel was able to interview then-Chief Suhr, Sergeant Williams, officers selected by the POA, officers and staff who were designated subject-matter experts by the department, officers in two ride-alongs provided by the SFPD, and officers and staff who agreed to be interviewed only on a confidential basis.<sup>20</sup>

In addition to the POA's December 15, 2015 bulletin, San Francisco's political context may have also hindered officer participation. Although the Panel was independent and was neither directed nor supervised by the DA, it was initiated by his office. Statements by the POA and its agents asserted throughout the investigation that this was "George Gascón's Blue Ribbon Panel" and, as such, was biased against the SFPD. Former Chief Suhr called the Panel "political grandstanding" and POA consultant (and former POA President) Gary Delagnes wrote of Gascón, "We need to go after this guy hard."<sup>21</sup> POA President Martin Halloran sent a letter to every staff member in the DA's office calling Gascón's efforts to investigate the department "antics" and "political pandering." The POA hired political consultant Nathan Ballard, who produced radio ads and drafted press releases blaming Proposition 47, which Gascón supported, for rising property crime rates.<sup>22</sup> Delagnes and other POA representatives claimed in declarations and later in videos posted on the internet that they had overheard Gascón making racist remarks over dinner in 2010—claims the DA categorically denied. An email leaked to the *San Francisco Examiner* sent by an attorney for the POA congratulated Ballard after publication of these declarations, stating that Gascón had "picked a fight with the wrong people."<sup>23</sup> On May 9, 2016, perhaps reacting to news accounts that the Panel had released a preliminary report when in fact it had not, the POA released a statement "dismiss[ing] the report"—which did not exist at the time and therefore the POA could not have read—as "biased, one-sided, and [an] illegitimate work of fiction."<sup>24</sup>

### **Public Records Act Request to the SFPD**

Lacking subpoena power, the Panel had the same authority as the general public to access documents critical to its investigation. The Panel sought to obtain relevant documents from the SFPD first through an informal request and subsequently through a formal request under the California Public Records Act (PRA) and its local equivalent, the San Francisco Sunshine Ordinance (SFSO). The SFPD did not respond to the Panel's request in the timeframe required by the PRA and SFSO—a failure that resulted in formal censure

20 The Panel also interviewed several former officers and staff of the department who insisted on confidentiality.

21 See Jonah Owen Lamb, *Gascon Draws SF Police Union Rebuke over Officer Misconduct Investigation*, S.F. Examiner (Apr. 6, 2015), <http://archives.sfe-examiner.com/2015/04/06/gascon-draws-sf-police-union-rebuke-over-officer-misconduct-investigation/> [https://perma.cc/Content?guid=2925769].

22 One of the press releases inaccurately stated that there had been a 669.9% increase in property crime in San Francisco since Gascon became the DA, a statement that was subsequently retracted. Vivian Ho, *Amid Push for S.F. Police Reform, Union Escalates Counterattack*, S.F. Chronicle (Mar. 24, 2016), <http://www.sfgate.com/news/article/Amid-push-for-SF-police-reform-union-escalates-counterattack-7004239.php>.

23 Michael Barba and Jonah Owen Lamb, *SF Police Union Claims Gascon Made Disparaging Remarks*, S.F. Examiner, Mar. 2, 2016, <http://www.sfxaminer.com/sf-police-union-claims-gascon-made-disparaging-remarks/>.

24 S.F. Police Officers' Ass'n, *SFPQA: Gascon's 'Blue Ribbon' Report Is A Biased, One-Sided, Illegitimate Work Of Fiction* (May 9, 2016), [http://d3n1glk6dl2hn5.cloudfront.net/\\_/media/20160509/16\\_be\\_57\\_38\\_4/89p43717715de4\\_a771c9d1-53e5-433a-833a-533333333333.pdf](http://d3n1glk6dl2hn5.cloudfront.net/_/media/20160509/16_be_57_38_4/89p43717715de4_a771c9d1-53e5-433a-833a-533333333333.pdf).

of the police department by the San Francisco Sunshine Ordinance Task Force (SOTF)—and refused to produce critical information with insufficient justification, at times even after it had originally promised to do so.

The Panel initially sent an informal request for documents to the SFPD on October 23, 2015. This informal request asked for a range of documents needed for this investigation, including stop, arrest, and clearance data; policy documents and data concerning body-worn cameras, *Brady v. Maryland*, hiring, and use of force; training materials; IAD compliance files; and information regarding the text-messaging incidents. The SFPD responded to this request on November 6, 2015, but instead of responding to the Panel, it directed its response to the DA to “review and disseminat[e] as [it] deemed appropriate.” The SFPD produced some important data and documents, such as E585 traffic stop data, use-of-force logs, and certain department bulletins (DBs), but refused to produce other information, inappropriately citing various PRA exemptions or arguing that the nature of the request was “too vast.” Further, the response included documents with information protected under state law. After consulting with the City Attorney, the DA returned these documents to the department before the Panel gained access to them. The rest of the documents were turned over to the Panel.

This limited production was insufficient for the Panel to complete its investigation, so on December 16, 2015, the Panel filed a formal PRA request. That omnibus request, reproduced in Appendix G, contained 30 requests seeking additional information, including the following.

- Information regarding the SFPD’s *Brady* committee and *Brady* list
- Stop, search, arrest, and crime clearance data
- Training materials related to bias, community policing, interactions with youth, procedural justice, *Brady*, and use of force
- Referrals to IAD, including the number of officers investigated, procedural guidelines governing IAD proceedings and imposing discipline, and complaints of biased policing
- Data, policies, and procedures regarding recruitment and promotion
- All department bulletins issued since 2010
- Communications and documents relating to the first text-messaging incidents

The information sought was critical to supplement the limited information the department provided on its website.

According to the law, public agencies have 10 days to respond to a PRA request, and in “unusual circumstances” can invoke a single 14-day extension.<sup>25</sup> The SFPD invoked the “unusual circumstances” exception on December 24, 2015, and subsequently made its first substantive response on January 8, 2016, producing a total of four documents. In this response, the SFPD addressed eight of the 30 requests, although two of the eight responses indicated that there were no responsive documents, and two refused to produce documents based on certain PRA exemptions. The SFPD also stated in this response that it would continue to produce documents on an “incremental or rolling basis,” but did not provide any timelines for production or indicate whether it planned on invoking any additional exemptions.

The Panel promptly filed a complaint with the San Francisco Sunshine Ordinance Task Force (SOTF), a local administrative body charged with enforcing open government laws including the PRA and the SFSO.

The SFPD made its next production on February 1, 2016, 47 days after receiving the formal PRA request. This production responded to a number of requests that the SFPD had previously ignored, but only produced six months’ worth of department bulletins and one additional document. This response invoked several PRA exemptions as grounds for refusing to produce documents. Because the Panel still needed critical information and the SFPD continued to violate its PRA and SFSO obligations, the Panel requested a hearing before the SOTF on February 9, 2016.

<sup>25</sup> Cal. Gov’t Code § 6523(c).

At the hearing on March 2, 2016, the SOTF voted unanimously that the SFPD had violated three provisions of the SFSO by failing to produce records in a timely manner; failing to provide sufficient assistance to the requester; and failing to provide appropriate justification for withholding certain records. That Order of Determination is attached to this report as Appendix H. In addition, the SOTF ordered the SFPD to provide a timeline to produce additional documents and urged the Panel and the SFPD to meet and confer over the remaining requests.

On March 4, 2016, the SFPD submitted timelines for responding to the remaining requests. Some of these timelines were quite long. For example, the SFPD stated that it could not produce all DBs for an additional 10 weeks, or 149 days after it first received the formal PRA request. Counsel to the Panel met with officers from the SFPD's legal division at SFPD headquarters on March 9, 2016, in an effort to help the SFPD focus its production efforts. At this meeting, the Panel narrowed or eliminated certain requests and prioritized others in exchange for a pledge from the SFPD that it would produce documents more quickly. The SFPD did not, however, produce any documents faster and missed five of the nine deadlines it set for itself. The Panel went back before the SOTF on April 6 and April 19, 2016, but further admonishment from the SOTF did not result in faster document production.

The SFPD's difficulty in responding to these requests—in particular the formal PRA request—revealed major barriers to transparency. The department does not maintain critical information in an organized, accessible, or useful way, and its legal division, which is staffed by sworn members, not lawyers, is ill-equipped to respond to PRA requests in conformance with the law. Ultimately, the SFPD produced a number of department bulletins and select other documents in response to the Panel's PRA request, but did not produce all documents to which the Panel was entitled under the PRA and did not do so in the time required by law.<sup>26</sup>

Throughout this process, the SFPD repeatedly offered two justifications for not complying with applicable public records laws.

1. First, the SFPD stated that the records the Panel sought were not kept in a manner that made them easily retrievable in response to the request. The SFPD's application of this reasoning to the Panel's request for documents sufficient to show the number of complaints involving bias is particularly instructive.<sup>27</sup> By stating that the records were not maintained in the manner sought, the SFPD conceded that it did not know how many complaints involving bias it receives and reviews per year. If the SFPD is not tracking the number of bias complaints it investigates, then it is extremely difficult to envision how SFPD leadership might study and understand the magnitude of any potential bias problem in the department. The SFPD also invoked this rationale as a reason to delay or decline to produce other critical information—even in redacted form—including its Brady list, attendance records from training sessions, lists of other referrals to IAD, and lists of officers assigned to IAD.
2. Second, the SFPD continually stated that it did not have the resources to respond to the Panel's request in a timely fashion. The SFPD's legal division is staffed by three officers (a lieutenant and two sergeants). None of these three personnel is an attorney. The SFPD did not devote any additional resources to responding to the Panel's request. In a move that further compounded the problems the already understaffed unit had in responding to the Panel's request, then-Chief Suhr replaced the lieutenant in charge in mid-March 2016. This was done without any notice to the Panel and merely days after the face-to-face meeting between a Panel representative and the former lieutenant in charge.

In addition to failing to respond to the PRA request in the timeframe the law requires, the SFPD refused to produce documents in response to several requests citing various statutory exemptions. The PRA

<sup>26</sup> The SFPD made limited additional productions on February 19, February 25, March 24, April 5, April 8, April 22, and May 20, 2016.

<sup>27</sup> The SFPD initially stated that the records were not maintained in the manner sought but would attempt to compile information responsive to the Panel's request. It subsequently reversed its position and stated that it would not produce any information because the records were not maintained in the manner sought.

permits public agencies to withhold public records if they fall within certain enumerated categories.<sup>28</sup> The SFPD cited some of these exemptions in refusing to produce documents responsive to requests for information regarding its *Brady* list and IAD complaint files, SFPD training materials, and information concerning the first text-messaging scandal. The various exemptions that the SFPD invoked are suspect, especially in three areas.

1. First, the SFPD would not produce IAD complaint files, even in redacted form, claiming that these files were completely protected from production under Penal Code § 832.7, which provides that police officer personnel records are “confidential.” While the underlying personnel record may be confidential, the SFPD could have produced factual summaries of the complaints so as to avoid identifying the officer involved. For example, the Office of Citizen Complaints (OCC) publishes the facts of each complaint it investigates in a way that does not reveal the identity of the officer under investigation and does not violate Penal Code § 832.7.<sup>29</sup>
2. Second, the SFPD would not produce training materials because it considers them “records of intelligence information or security procedures” that are exempt from production under Government Code § 6254(f). The Panel requested training materials related to a wide variety of areas. It is difficult to envision how training materials related to bias, procedural justice, or *Brady v. Maryland* implicate this exemption.
3. Third, the SFPD refused to produce documents and communications relating to the original text-messaging incidents themselves. It claimed that doing so would violate one actual and two proposed protective orders entered in *Daugherty v. City and County of San Francisco*, the legal action brought by officers involved in the original texting incidents that challenged the SFPD’s ability to discipline them. But most of the documents requested were not documents created during the course of the *Daugherty* case. The Administrative Code clearly indicates that documents previously created in the ordinary course of business that were not exempt from disclosure at the time they were created do not become exempt merely because they are subsequently used in litigation.<sup>30</sup> More fundamentally, the orders invoked do not cover the documents sought. The orders pertain to specific documents filed with the court, which were not the subject of the Panel’s request. The Panel sought underlying documents and communications involving the text-messaging cases, not those filed with the court.

## SFPD Overview and General Recommendations

The mission of the SFPD is to “preserve the public peace, prevent and detect crime, and protect the rights of persons and property by enforcing the laws of the United States, the State of California and the City and County.”<sup>31</sup> It is headed by the Chief of Police, who is appointed by the Mayor. Between April 2011 and May 2016, the Chief of Police was Greg P. Suhr, who rose through the ranks and had been in the SFPD for over 30 years. As noted earlier, Suhr resigned on May 19, 2016. As of the date of this report, the current Interim Chief is Toney Chaplin, who has been with the department for 26 years. The Chief of Police reports to the Police Commission.<sup>32</sup> Either the Commission or the Mayor has the authority to remove the Chief.

Until recently, the SFPD was divided into five bureaus: Operations (housing the Patrol Division and the Investigations Bureau); Administration (budget, information technology, personnel, and other functions); Special Operations; Airport; and Chief of Staff (community engagement, media relations, and risk management including internal affairs). In February 2016, former Chief Suhr announced the creation of the new Professional Standards and Principled Policing bureau, which was tasked with implementing

<sup>28</sup> Cal. Gov’t Code § 6254.

<sup>29</sup> See Chapter 5: External Oversight for more on the OCC.

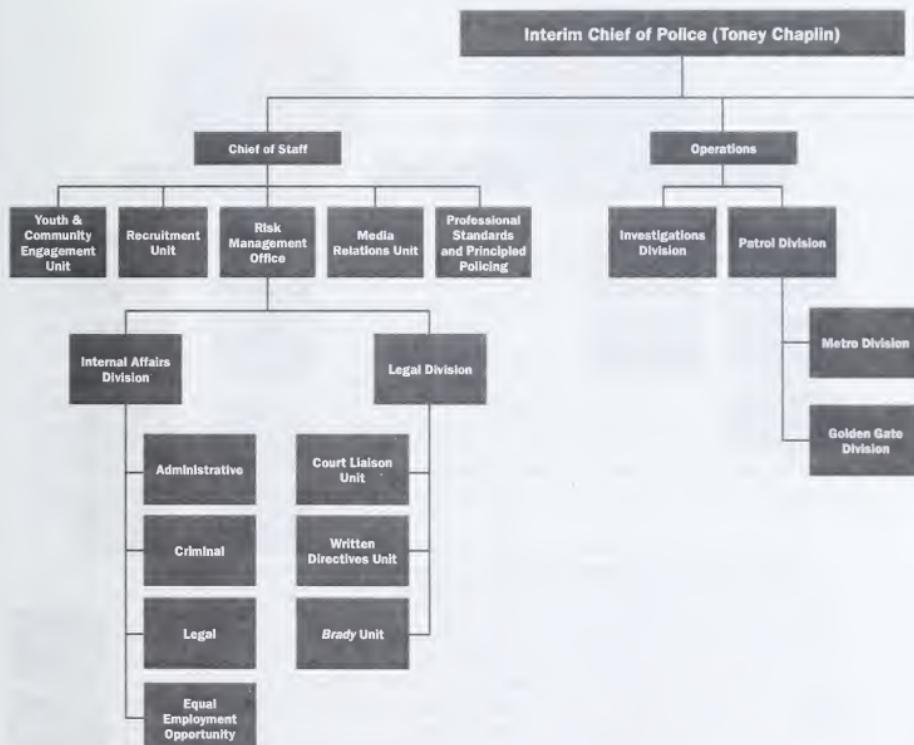
<sup>30</sup> See § 67.24(b)(1); see also Cal. Gov’t Code § 6254(b) (defining the litigation documents exemption as applying only if the “document was specifically prepared for use in litigation”).

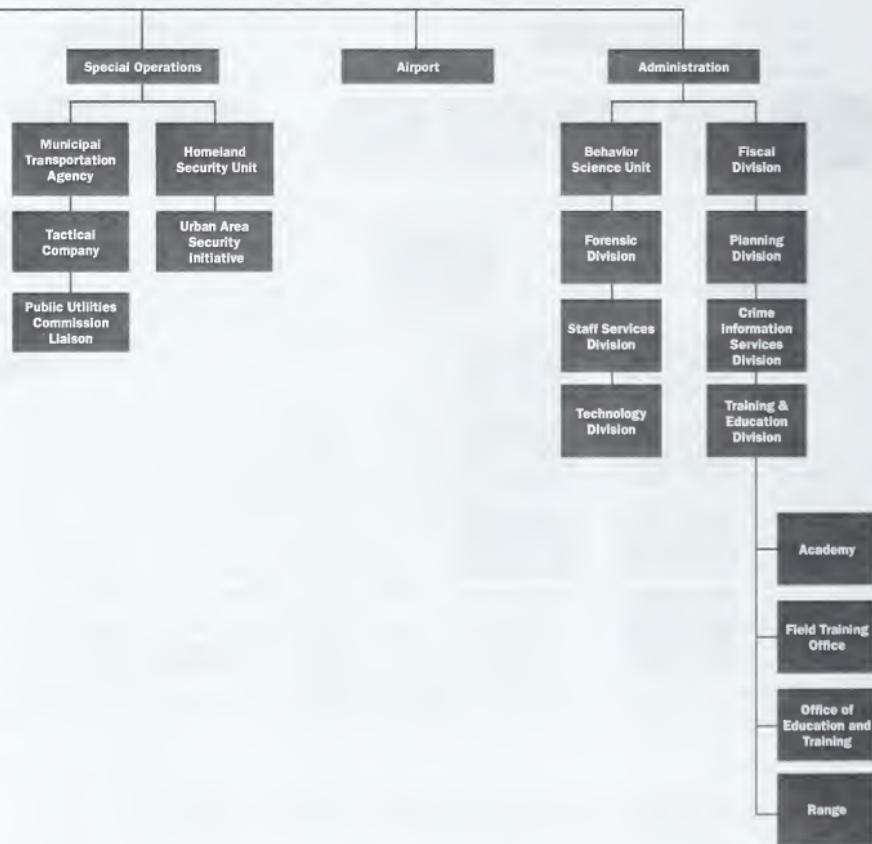
<sup>31</sup> Charter § 4.127.

<sup>32</sup> See Chapter 5: External Oversight for a full description of the Police Commission.

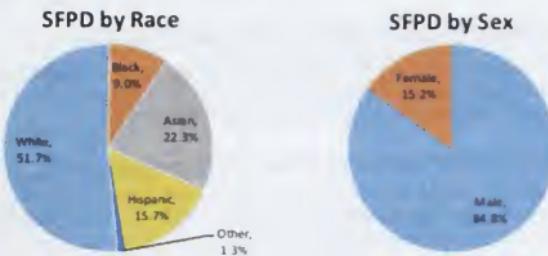
recommendations from the Department of Justice COPS review. Patrol and investigation responsibilities are divided geographically into 10 district stations. Other functions, such as special operations, internal affairs, and general administration, are centralized, generally at the new Public Safety Building and Police Headquarters, which opened in April 2015.

The following chart approximates the structure of the SFPD, as of publication of this report.





The SFPD's budget for 2015-2016 was about \$530 million. According to the 2014 SFPD annual report (the most recent report available), 88 percent of the budget went to salaries and benefits for SFPD sworn officers and employees.<sup>33</sup> As of February 11, 2016, the SFPD had 2,114 sworn members, 143 more than the 1,971 sworn officers mandated by Charter § 4.127. It is the largest department in the Bay Area. A recent study found that the SFPD has the highest average pay of any department in the state, and that its Chief—at an annual salary of \$307,450—was one of the highest-paid police chiefs of any major city in the country.<sup>34</sup> The department's demographic breakdown is demonstrated below.<sup>35</sup>



The Police Commission sets rules and policy for the department through department general orders (DGOs), all of which are available on the SFPD's website.<sup>36</sup> There are about 120 DGOs governing the department's organization and administration, equipment and operations policies, use of force, and more. DGOs are meant to serve as a guide for an SFPD officer's day-to-day duties, and "contain policies and procedures" of the SFPD as well as "rules governing conduct."

It is unclear whether the SFPD and the Police Commission have a specific schedule for reviewing and revising the DGOs, or what factors and circumstances contribute to the SFPD and the Police Commission determining that a DGO should be updated. Many do not appear to be updated on a regular schedule: two-thirds of the DGOs have not been updated since the 1990s, including ones that bear on important topics such as use of force (DGO 5.01, last updated October 4, 1995) and the internal discipline process (DGO 2.07, last updated July 20, 1994). Only nine have been updated in the last five years. When DGOs are updated, this process is typically led by the Command Staff and the Police Commission, with input from the POA and community stakeholders.

The DGOs are supplemented by department bulletins (DBs) on certain specific areas of conduct. Many DBs are not easily locatable or accessible, despite the fact that they appear to be as important a component of the SFPD's policies as DGOs. Some of these bulletins are de facto updates to the DGOs and supplement the general guidance of the DGOs in specific conduct areas. Others are simply reminders to police officers on the existence of various policies. For example, in December 2015, seen in part as a response to the shooting death of Mario Woods, the SFPD added a DB that amended the DGOs and elevated drawing and pointing a firearm at a person as a reportable act. This DB explicitly states that it "amends DGO 5.01 & 5.02," and thus appears to be a specific amendment to SFPD's policies.<sup>37</sup> In contrast, DB 15-106, titled "Avoiding the 'Lawful but Awful' Use of Force," does not appear to be anything more than a reminder by former Chief Suhr to SFPD officers to consider alternatives before implementing uses of force.

<sup>33</sup> San Francisco Police Dep't, 2014 Annual Report, <http://sanfranciscopolice.org/annual-reports>.

<sup>34</sup> Jonah Owen Lamb, SF Police Paid a Pretty Penny, S.F. Examiner (Sep. 8, 2015), <http://www.sfgate.com/politics/article/SF-police-paid-a-pretty-penny-12902111.php#ixzz3oqZL0m6k>.

<sup>35</sup> Data, San Francisco Police Dep't, (May 26, 2016, 12:47 PM), <http://sanfranciscopolice.org/data#demographics>.

<sup>36</sup> SF Police General Orders, San Francisco Police Dep't, (May 26, 2016, 12:47 PM), <http://sanfranciscopolice.org/legislation-orders>.

<sup>37</sup> Department Bulletin 15-255.

## **General Recommendations<sup>38</sup>**

### **1. The Police Commission should review department general orders on a regular basis.**

The Police Commission should set a review schedule to examine all existing DGOs to ensure that they are up to date and reflect national best practices—where they do not, they should be revised as soon as practicable.

### **2. The SFPD should cease the use of department bulletins to modify policies.**

Any amendments to policies should be made to the text and language of the relevant DGOs. To the extent the SFPD wishes to continue to use DBs, they should be used to provide guidance or general clarifications of the DGOs, but should not operate as specific changes to the DGOs themselves.

### **3. The SFPD should make all department bulletins publicly available online.**

The SFPD currently posts its DGOs online, but it does not make its DBs publicly available except through a Public Records Act request. Best practices indicate that a police department should post all of its bulletins, orders, training bulletins, and manuals online. DBs contain important policing procedures and policies that impact the public. If the SFPD continues changing policy outside of the public and transparent process of the Police Commission, the public ought to be aware of these policy changes. Currently, there is no way to know what DBs exist, as the SFPD does not even publish an index on its website.

## **Community Perspectives**

The texting incident that gave rise to the Panel was deeply alarming for a number of reasons, primarily for the revelation that certain SFPD officers harbored and felt free to express extreme prejudice against communities of color and LGBT communities. It was essential, therefore, for the Panel to listen to and collect information from these communities about their experiences with the SFPD. The results of that inquiry, referenced on occasion in the various chapters of this report, are described here.

The Panel solicited community feedback about the SFPD in a variety of ways. In addition to interviews of community leaders by law firm working groups related to their issue areas, the Panel heard from community members at its five public hearings—one of which was devoted exclusively to receiving community perspectives. Additionally, the Panel's Executive Director interviewed representatives of community coalitions and leaders of community-based organizations. He also attended the three community listening sessions held by the COPS office, various community coalition and organizational meetings, and focus groups at Balboa and Mission High Schools. Finally, the Panel maintained an email address—[SFBlueRibbonPanel@mto.com](mailto:SFBlueRibbonPanel@mto.com)—through which the public asked questions and provided comments.

Anecdotal support for findings may be perceived to be less rigorous than other forms of evidence, but it provides an important means to try to understand the experiences of those potentially affected by the bias evinced by the text messages. Detecting and eliminating systemic bias requires paying attention to the perceptions and accounts of these community members. Many of the anecdotal experiences recounted to the Panel by community members were corroborated by other accounts and other forms of evidence, as discussed elsewhere in this report.

While the Panel was unable to incorporate all feedback submitted by community members, perspectives largely centered on the following concerns.<sup>39</sup>

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38 See Appendix A for a complete list of the Panel's findings and recommendations.

39 The Panel also heard numerous perspectives expressing concerns about support for SFPD officers' mental health (including the potential need to address PTSD for returning veterans), the role of the SFPD in the context of gentrification and displacement, and officer interactions with the homeless, with people in need of mental health support, and with young people (including the need for officers to better understand the adolescent brain, the view that gang injunctions are inherently biased and unjust, and the role of officers at schools). While these areas warrant consideration by the department, community members, and other stakeholders, they are outside the central focus of this report.

## Textgate

Outrage over the first texting incident was raised by various community members in several ways, including the following examples.

- Some community members said the texts severely damaged trust between the community and the department.
- Some said the texts corroborated consistently voiced claims by communities of color that they are aggressively policed and unfairly profiled by the SFPD.
- Some said the department's failure or inability to discipline officers involved in Textgate contributed to the community's perception of a culture of impunity and a general lack of accountability.
- One leader of the Justice for Mario Woods Coalition argued that one of the text's references to Black people as "animals" was substantiated by incidents like the death of Mario Woods, whom the leader perceived to have been shot like an animal.

## Absence of Community Policing

Despite the existence of DGO 1.08, which expresses the SFPD's commitment to "community policing," a consistent theme community members shared was a perception that the SFPD did not engage in community policing in neighborhoods like the Bayview, the Western Addition, the Mission, and other areas with a critical mass of Black and Latino populations.

DGO 1.08 defines community policing as "a philosophy and organizational strategy in which the police work collaboratively with community members, community-based organizations, other city agencies, and others, in order to reduce violent crime, create safer communities, and enhance the health and vibrancy of neighborhoods in San Francisco." DGO 1.08 also identifies various components of community policing—including partnerships with the community and interaction with youth—and provides that, "as staffing allows," district captains and lieutenants must ensure the assignment of officers to steady beats and sectors, regular attendance of beat and sector officers at all community meetings, and regular staffing of foot beat assignments.

A significant number of community members expressed a desire for community policing that would include:

- officers assigned to the communities where they live or grew up;
- long-term assignments in a community to get to know and build trust with residents;
- officers on regular foot patrols and not exclusively in vehicles;
- officers engaging with community members respectfully, as fellow community members:
  - Several community members expressed a desire for officers to be unarmed while engaging with the community to increase trust in and reduce fear of the officer. Suggestions included a focus on community building for the first two years of an officer's career (after which the officer would qualify for a firearm) and a set number of unarmed "community hours" per year for all officers.
- mandated, robust continuing education for officers on community policing, cultural competency, language access, implicit bias, and systemic racism; and
- regular evaluations of officers to ensure that they qualify to serve under current standards.

## Stops, Searches, and Arrests

*Chapter 1: Stops, Searches, and Arrests* provides detailed findings and recommendations regarding stops and searches, including selected community perspectives. The following related themes were also raised numerous times by community members and coalitions.

- Several community members expressed their perception that Black men could not walk down the sidewalk in the Bayview without being harassed by SFPD officers. Bayview residents also shared their view that SFPD officers over-police in their neighborhood, stopping Black people for minor infractions. Further, there is a perception that officers stop Black people in an overly aggressive manner, perpetuating the idea that officers view all Black people as dangerous. This view was compared to the perception that police treat people with courtesy in predominantly White neighborhoods.
- Community members shared their view that SFPD officers regularly asked people of color whether they were on probation or parole. Community members believed this question reduced trust and perpetuated the idea that officers viewed all Black and Latino people as criminals. Community members also expressed frustration that officers conducted searches of people who were on probation or parole without probable cause for the search (though current law permits this practice).
- Some community members expressed skepticism that the SFPD's imminent adoption of body-worn cameras would increase police accountability, given the perception that current cellphone and other footage of officer-involved shootings have not guaranteed that the officers are held accountable.

### Use of Force and Officer-Involved Shootings

*Chapter 3: Use of Force and Officer-Involved Shootings* provides detailed findings and recommendations regarding officer-involved shootings (OIS), including selected community perspectives. The following related themes were also raised numerous times by community members and coalitions.

- Community members expressed their perception that the department regularly and immediately investigates and disparages victims of officer-involved shootings before investigating the shooting itself—including, for instance, claims by the department that the victim “lunged” at the shooting officers before all the evidence had been collected. This strategy was thought to be connected to the “reasonableness” standard for officers using force—if the department could paint the victim as dangerous, that would potentially frame the shooting as “reasonable.”
  - The “reasonableness” standard itself—stemming from the U.S. Supreme Court decision in *Graham v. Connor*—was frequently raised as highly problematic and unjust, allowing for “lawful but awful” shootings.<sup>40</sup>
  - Community members also expressed concern about the families of OIS victims, claiming that the SFPD’s priority was to go to the media first to ensure that its version of events was reported, even before informing the victim’s family of the incident.
  - Community members also opined that families of OIS victims should qualify under the California Victims’ Compensation Program.
- Many community members expressed indignation over the high number of bullets officers sometimes shoot at a single person, which to them confirmed their perception that officers did not value the lives of people of color and were shooting to kill. Community members also perceived that officers too often did not attempt to call for medical attention for OIS victims.
- Community members expressed outrage about the SFPD hiring officers from other departments who had improper use-of-force incidents and OIS on their records. Some laterally moved officers were known to then engage in similar incidents as members of the SFPD.
- Community members expressed concern about autopsy reports of OIS victims issued by the city medical examiner’s office, claiming that—in the Alex Nieto case, for example—the autopsy reports too often echoed events as framed in the related SFPD incident report and did not represent truly independent conclusions.

<sup>40</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

## SFPD Cooperation with Federal Agencies

Leaders of several civil and legal rights organizations expressed concern about the SFPD's cooperation with federal law enforcement agencies—including the Federal Bureau of Investigation (FBI) Joint Terrorism Task Force and Immigration and Customs Enforcement—potentially in violation of local laws. They pointed to the cases of Sarmad Gilani<sup>41</sup> and Pedro Figueroa-Zarceno<sup>42</sup> as recent examples.

The perception that the SFPD cooperates with federal agencies may be enough to reduce instances in which community members call on the department for assistance. Leaders of civil rights and legal rights organizations and numerous community members reported that they would not call on the police for basic public safety assistance (even in an emergency) because of fear of deportation. According to one community coalition leader, "If people do not reach out for help because they think they'll be arrested or deported and separated from their families, that's a serious public safety issue ... all it takes is seeing your neighbor taken away after they called the police to ruin trust."

## SFPD Treatment of Domestic-Violence Incidents

Leaders of coalitions supporting immigrant domestic-violence survivors—primarily Latina and Asian women—shared concerns about officers' handling of these incidents. While some leaders lauded the SFPD for adopting policies on language access and officer-involved domestic violence, forming a language access working group, and engaging in community-led trainings on domestic violence, they also expressed concern about implementation of policies and trainings. Coalition and organizational leaders and members cited the following ongoing challenges related to domestic violence.

- Instead of arresting the perpetrators, SFPD officers sometimes arrest domestic-violence survivors.<sup>43</sup> According to leaders of relevant community-based organizations, this may happen for a number of reasons.
  - The perpetrator may approach the officer first upon arrival and disparage the survivor, casting her<sup>44</sup> as "crazy" or "on meds." This dynamic is often exacerbated when the perpetrator speaks English and the survivor does not.
  - The survivor may be the subject of a valid warrant. While arrests based on warrants may seem justified, community leaders noted that even survivors with arrest warrants should be eligible for protection from domestic violence, yet these arrests dissuade survivors from seeking needed help.
- SFPD leadership and officers who act as liaisons to the domestic-violence advocacy community rotate positions within the department too frequently to build trust and improve policies and practices. This results in frequently having to start relationships with officers from scratch, an impediment to progress.
- Transgender domestic-violence survivors—particularly low-income people of color—have experienced ridicule from SFPD officers and a refusal to record their preferred genders.
- The SFPD does not consistently share data about its interactions related to domestic violence, presenting a barrier to assessing systemic issues. When a critical mass of anecdotal evidence is presented as proof of systemic issues, the department and oversight bodies do not see it as a systemic issue occurring over and over again and only consider the individual cases, often attributing the cause as "bad apple" officers.

<sup>41</sup> See Alex Emslie, *FBI-S.F. Police Counterterrorism Activity Violated Local Law, Advocates Say*, KQED News (Jan. 15, 2016), <http://qz.com/225601/fbi-s-f-police-counterterrorism-activity-violated-local-law-advocates-say/>, for more information about the Sarmad Gilani case.

<sup>42</sup> See Vivian Ho, *SF Cops Admit Car-Theft Victim Was Wrongly Turned Over to ICE*, SFGate (Feb. 8, 2016), <http://www.sfgate.com/bayarea/article/SF-cops-admit-car-theft-victim-was-wrongly-turned-over-to-ice-6810705.php>, for more information about the Pedro Figueroa-Zarceno case.

<sup>43</sup> Advocates who worked with those subjected to domestic violence typically referred to them as "domestic-violence survivors."

<sup>44</sup> In examples shared with the Panel by community leaders and members, domestic-violence survivors invariably identified as female.

- Some officers reportedly blame the victim, asking questions like "What did you do to make him hit you?" and have dissuaded victims from filing reports against perpetrators, advising, e.g., "He's going to make you look bad in court."
- Some officers refuse to file an official report or file a report of a "verbal dispute" if they cannot perceive any visible marks of domestic abuse.
- Contempt by officers for non-English speakers was a common theme expressed by several survivors, including a lack of willingness to provide language access. Community members reported that officers asked how long they had been in the country and why they did not speak English.<sup>45</sup>
- Some officers reportedly violated policy by not regularly assessing the need for interpreters, not calling for interpreters upon request, and/or by using family members to translate.
- Several Spanish-speaking domestic-violence survivors reported that they were forced to wait for excessive periods of time (e.g., seven hours) to file reports at Mission District Station—the reason for the delay given by the department was the absence of an interpreter. When these survivors were finally given the opportunity to file a report, they were forced to share sensitive details in a public waiting room, with neighbors within earshot.
  - Similarly, a Cantonese-speaking survivor reported that officers told her no interpreters were available when she went to Central station and asked her to call from her apartment. When she went back and called into the station, she was again told no interpreters were available.
- Survivors fear filing reports of misconduct with the OCC because the complained-against officer may also be responsible for enforcing custody or restraining orders on behalf of the survivor.
- Officers are perceived to avoid domestic-violence calls because of their confusing and potentially dangerous nature. Confusion may arise when survivors decline to press charges or don't want to leave their abusive partners. Coalition members suggested that officers needed to be trained on the fundamental nature of domestic violence, cultural contexts, and survivors' perspectives to alleviate this confusion.

The themes presented above highlight areas susceptible to bias that the department must address to start rebuilding trust with the community. This will necessitate a candid and deep examination of—and a top-down commitment to improving—the department's interactions with communities of color and LGBT communities.

<sup>45</sup> In several community meeting settings, Latino/a residents reported that SFPD officers treated them with suspicion—as though they were undocumented—regardless of actual status.



# Chapter 1:

## Stops, Searches, and Arrests

### Background

This chapter discusses issues related to bias in SFPD stops, searches, and arrests.<sup>46</sup> While the SFPD's policies prohibiting biased policing are in line with best practices, available statistics indicate racial disparities in its stops, searches, and arrests. Black and Hispanic<sup>47</sup> people are more likely to be searched without consent than any other group, and, of those searched, Black and Hispanic people had the lowest "hit rates" (i.e., the rate at which searches found contraband).

Moreover, there is a perception among communities of color that bias exists in SFPD stops, searches, and arrests, and some community members expressed concern that the SFPD does not engage in community policing. The investigation also uncovered incidents of stop-and-frisk practices, but it is unclear how widespread these practices are. While interviewees generally agreed that body-worn cameras will be beneficial for the SFPD and the public, a number of issues in SFPD's draft body-worn camera policy warrant additional consideration.

The SFPD's data does have a number of limitations. The department's data collection efforts suffer from low compliance among officers, and the SFPD has failed to accurately report the number of Hispanic arrestees to the California Department of Justice, classifying them instead as "White" arrestees.

### SFPD Policies Related to Stops, Searches, and Arrests

SFPD DGO 5.17 prohibits biased policing, which the policy defines as "the use, to any extent or degree, of actual or perceived race, color, ethnicity, national origin, religion, gender, age, sexual orientation, or gender identity in determining whether to initiate any law enforcement action in the absence of a specific suspect description." Where a suspect is identified or described in part by any of the listed characteristics, officers may rely on those characteristics "in part only in combination with other appropriate identifying factors" and such characteristics "should not be given undue weight." The policy provides that officers "must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, traffic stops, arrest[s], nonconsensual searches and property seizures."

DGO 5.17 also recommends steps that can be taken to prevent perceptions of biased policing when conducting pedestrian, bicycle, or vehicle stops. These steps include being courteous and professional, providing an explanation for the stop, ensuring the detention is no longer than necessary, answering questions the person may have about the stop, and providing the officer's star number.

<sup>46</sup> This issue area includes both vehicle and pedestrian stops. Excluded from the issue area are searches carried out pursuant to a warrant.

<sup>47</sup> The term "Hispanic" is used by the Panel here in accordance with the SFPD's data collection category. For purposes of this report, "Latino" and "Hispanic" are interchangeable.

On the issue of detentions, DGO 5.03 states that “[f]actors such as the person's race, sex, sexual orientation, gender, gender identity, gender presentation, age, dress, unusual or disheveled or impoverished appearance do not alone justify even a brief detention, a request for identification, or an order to move on, nor do general complaints from residents, merchants or others.” Further, per DGO 5.03, and pursuant to California Penal Code Section 849(b), SFPD officers are required to issue a Certificate of Release (“849(b) form”) to all released detainees, except for “brief detentions.” The officer must provide the original 849(b) form to the person being released and forward a copy to the Records Section.

SFPD DB 15-150 provides that officers should fill out a field interview (FI) card anytime an officer conducts a consensual encounter or detains a suspect, and an incident report is not required. FI cards include demographic information, as well as fields for recording the person's name, country of origin, sex, birthdate, height, weight, hair, eyes, hair style, complexion, clothing, addresses, phone, and location, date, and time of interview. In addition, the card includes fields regarding vehicle information, including year, make, model, style, color, license, VIN number, vehicle damage, and vehicle peculiarities. Moreover, the card lists investigative categories for selection (e.g., drugs, vice, gangs) and a field for a description of the stop. DB 15-150 states that filling out an FI card for each subject “is particularly important when officers encounter multiple subjects together, i.e. several gang members in a car during a traffic stop,” and provides procedures for entering the information into an FI database.

DB 13-258 sets out procedures for police interactions with transgender individuals. It explains how to address transgender individuals appropriately, prohibits detentions based on appearance or gender identity alone, prohibits searches to determine a detainee's gender, prohibits detaining a transgender arrestee in a district station's holding cell, and requires notification to dispatch of the starting and ending mileage when an officer transports a transgender individual.<sup>48</sup> DB 13-258 does not address the procedure officers should follow if they need to conduct a search of a transgender individual.

DGO 1.08 asserts the department's commitment to “community policing,” which it defines as “a philosophy and organizational strategy in which the police work collaboratively with community members, community-based organizations, other city agencies, and others, in order to reduce violent crime, create safer communities, and enhance the health and vibrancy of neighborhoods in San Francisco.” It identifies various components of community policing—including partnerships with the community and interaction with youth—and provides that, “as staffing allows,” district captains and lieutenants must ensure the assignment of officers to steady beats and sectors, regular attendance of beat and sector officers at all community meetings, and regular staffing of foot beat assignments.

## Data Collection

Under SFPD's traffic stop data collection program, officers are required to collect and record certain traffic stop data, known as “E585” data. DB 14-059 instructs officers to fill out E585 forms “after any vehicle stops related to the following incidents.”

- Moving violations, including bicycles and pedestrians
- Municipal Police Code violations
- Penal Code violations
- Transportation Code violations
- 916 vehicles (suspicious person in vehicle) and high-risk stops
- Mechanical or non-moving violations
- Driving under the influence violations
- Traffic collisions

<sup>48</sup> Per DGO 2.01, the same mileage reporting requirement applies when transporting a female. Neither DGO 2.01 nor DB 13-258 includes a rationale for the mileage reporting requirement.

- Assistance to motorists
- Be on the lookout (BOLO), all-points bulletin (APB), or warrants<sup>49</sup>

For the above incidents, officers are required to report (1) date and time of the stop; (2) driver's race, sex, and age; (3) reason for the stop; (4) whether a search of the vehicle was conducted; (5) result of the contact; and (6) location of the stop.<sup>50</sup> SFPD's Compstat Unit has been tasked with developing monthly reports on E585 data, according to a 2012 review of SFPD's Compstat program by the Controller's Office.<sup>51</sup>

Ordinance No. 166-15, passed by the Board of Supervisors and approved by Mayor Lee in September 2015, amends the Administrative Code to require the SFPD to collect and regularly report data on all "encounters," defined as a detention or traffic stop "where the Officer initiates activity based solely on the Officer's own observations or the observations and direction of another Officer, rather than on information provided by dispatch or reported by a member of the public."<sup>52</sup> "Detention" is further defined as "an interaction between an Officer and an individual in which the Officer detains the individual," and "traffic stop" is defined as "an interaction between an Officer and an individual driving a vehicle, in which the Officer orders the individual to stop the vehicle." The ordinance largely retains the above-listed categories of data from the E585 form,<sup>53</sup> but it additionally requires that the SFPD analyze and report its data to the Mayor, Board of Supervisors, Police Commission, and Human Rights Commission on a quarterly basis. The reports must include the total number of encounters, use-of-force incidents, and arrests—as well as data regarding the reasons for the encounters and arrests—broken down by race or ethnicity, age, and sex. The ordinance also requires the SFPD to obtain from the OCC and include in each report the total number of OCC complaints received or closed during the reporting period alleging bias based on race or ethnicity, gender, or gender identity, and the total number of each type of disposition for such complaints. The first reports on arrest and use-of-force data are due on June 30, 2016, but full compliance with the reporting requirements is not due until June 2017.

The Racial and Identity Profiling Act of 2015, signed by California Governor Jerry Brown in October 2015, requires each state and local agency that employs peace officers to annually report to the Attorney General data on all stops, including demographic information. For agencies like the SFPD that employ 1,000 or more peace officers, the first annual report is due by April 1, 2019.<sup>54</sup>

## **Body-Worn Cameras**

Body-worn cameras (BWCs) are small video-recording systems worn by police officers as they perform their duties, capturing audio and video of officers interacting with the public. In recent years, police departments across the country have begun implementing BWCs. In April 2015, the Mayor, Chief of Police, and Police Commission announced that the city would fund BWCs for SFPD officers. The Police Commission formed a BWC policy working group, which met from June to August 2015 and was composed of representatives from the SFPD, the San Francisco Public Defender's Office, the OCC, the Human Rights Commission, the San Francisco Bar Association, and the public. The Police Commission approved the draft BWC policy on

49 SFPD Department General Order 14-059, Traffic Stop Report Entry.

50 Lorie Fridell, Fair & Impartial Policing: Recommendations for the City & Police Department of San Francisco 10-11 (2007), <http://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/4953.pdf>.

51 Memorandum from the S.F. Controller's Office on CompStat Review to the S.F. Chief of Police 13-14 (Jan. 20, 2012), [http://sfcontroller.org/sites/default/files/FileCenter/Documents/2673-SFPD\\_CompStat\\_Memo\\_13-14.pdf](http://sfcontroller.org/sites/default/files/FileCenter/Documents/2673-SFPD_CompStat_Memo_13-14.pdf).

52 S.F. Bd. of Supervisors Ordinance No. 166-15, File No. 150643 (2015), <http://www.sfbos.org/bos/ordinances/15/0166-15.pdf>.

53 The ordinance originally required officers to record a person's gender identity—in addition to race or ethnicity, sex, and age—but that provision was removed at the request of LGBT groups concerned that it would "place transgender individuals at an increased risk for discrimination, harassment, or violence." Seth Hemmelgarn, SF Supes Address Trans Concerns on Police, Bay Area Rep. (Sept. 10, 2015), <http://www.ebar.com/news/article.php?sec=news&artid=10584>.

54 Cal. Assembly Bill No. 953 (2015-2016 Reg. Sess.), [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB953](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB953).

December 2, 2015, after which it went into the meet-and-confer process with the San Francisco POA.<sup>55</sup> As a result of negotiations during the meet-and-confer process between the city and the POA, the draft policy was altered to expand officer review of footage, and the Police Commission approved the policy as amended on June 1, 2016.<sup>56</sup>

On February 24, 2016, the Board of Supervisors approved \$2.4 million in funding for the BWC program.<sup>57</sup> According to the SFPD, it will deploy 800 BWCs by late July 2016, covering about 37 percent of its 2,100 members, and the department expects to have 1,800 officers equipped with BWCs by the end of 2016.<sup>58</sup> SFPD has reportedly hired nine legal assistants (of a planned total of 11) who will ensure the department is complying with the BWC policy, redact BWC footage appropriately, and respond to requests for BWC footage.<sup>59</sup> It is unclear who they will report to or what training they will receive.

The BWC policy states that the purpose of the policy is for the SFPD to demonstrate its commitment to transparency, ensure the accountability of its members, increase public trust in officers, and protect its members from unjustified complaints of misconduct. Multiple members of the BWC policy working group reiterated that the purpose of the policy is transparency and accountability. Former Chief of Police Greg Suhr also indicated he believed BWCs, along with other initiatives, will help foster trust within the community.

### **Stop and Frisk**

According to the SFPD, its officers do not practice "stop and frisk,"<sup>60</sup> but a number of community members reported stop-and-frisk incidents. DGO 5.03 states that "[a] police officer may briefly detain a person for questioning or request identification only if the officer has a reasonable suspicion that the person's behavior is related to the criminal activity. The officer, however, must have specific and articulable facts to support his/her actions; a mere suspicion or 'hunch' is not sufficient cause to detain a person or to request identification." DGO 5.03 has not been revised since 2003.

In May 2014, the SFPD issued a department bulletin on Terry searches.<sup>61</sup> DB 14-154 provides a "legal update" on Terry searches based on *Florida v. J.L.*, 529 U.S. 266 (2000)—a U.S. Supreme Court case decided 14 years earlier—and gives "guidance regarding the suspicion factors that in combination with the responding officers' observations would justify a detention and 'pat search' [or Terry search for weapons]" following an anonymous telephone tip to police dispatch. It instructs officers to consider a consensual encounter if there is no "reasonable suspicion" to justify a detention, as consensual encounters do not require "reasonable suspicion."

In other metropolitan areas, the use of stop-and-frisk policies has drawn scrutiny from courts and civil rights groups and has led to concerns about racial profiling disproportionately affecting Black and Latino

55 S.F. Police Comm'n, Body Worn Cameras Policy: Recommended Draft (2015), <http://sanfranciscopolice.org/May/05>ShowDocument.aspx?documentID=27670>; Minutes of S.F. Police Comm'n Meeting, S.F. Police Dept (Dec. 2, 2015), <http://sanfranciscopolice.org/meeting/police-commission-meeting-minutes-12-2-2015-minutes>.

56 Jonah Owen Lamb, Police Commission Approves Body Cameras for SFPD, S.F. Examiner (June 2, 2016), <http://www.sfgate.com/police/article/Police-commission-approves-body-cameras-sfpd-110400001.html>.

57 Joshua Sabatini, Supes Release \$2.4M for Police Department Body Cams, S.F. Examiner (Feb. 25, 2016), <http://www.sfgate.com/police/article/Supes-release-2-4m-for-police-department-body-cams-110400001.html>.

58 Philip Marcelo, Police Around the Country Are 'Woefully Short' on Body Cameras, Business Insider (May 4, 2016), <http://www.businessinsider.com/are-police-around-the-world-using-body-cams-2016-3>.

59 Sabatini, Supes Release \$2.4M for Police Department Body Cams, *supra* note 57. The draft BWC policy does not address the redaction of BWC footage, so it is unclear what guidelines will be used.

60 S.F. Police Dep't, Review and Response of the Final Report of The President's Task Force on 21st Century Policing 16 (2015), [http://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/TaskForceReportResponse\\_21stCenturyPolicing\\_2015\\_09\\_22.pdf](http://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/TaskForceReportResponse_21stCenturyPolicing_2015_09_22.pdf).

61 In *Terry v. Ohio*, the U.S. Supreme Court held that the Fourth Amendment prohibition on unreasonable searches and seizures is not violated when a police officer stops and frisks a suspect without probable cause to arrest. If the officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime and has a reasonable belief that the person "may be armed and presently dangerous." 392 U.S. 1, 30 (1968).

people. Reports found the vast majority of people stopped and frisked by the New York Police Department (NYPD) were Black or Latino and the majority of them had done nothing to warrant suspicion. For example, although young Black and Latino men make up only 4.7 percent of New York City's population, Black and Latino males between the ages of 14 and 24 accounted for 38.6 percent of stops in 2013, and nearly 90 percent of them were innocent of any wrongdoing.<sup>62</sup> Moreover, an expert witness noted NYPD's stop-and-frisk policy alienated the community. In 2013, a federal court order mandated changes to NYPD's stop-and-frisk policy, finding the policy violated Fourth Amendment rights and constituted a "policy of indirect racial profiling."<sup>63</sup>

In Chicago, an American Civil Liberties Union (ACLU) analysis of stop-and-frisk data for May through August 2014 found that Black people were disproportionately stopped. Black people were subjected to 72 percent of all stops, even though they made up just 32 percent of Chicago's population.<sup>64</sup> In 2015, Chicago and the ACLU reached an agreement to monitor how police officers conduct stops. The agreement requires officers to collect data for all investigatory stops and protective pat-downs (including investigatory stops that do not lead to an arrest) and to conduct pat-downs only when the officer is reasonably suspicious that a person is armed and dangerous. An independent consultant will issue public reports twice a year on the stops and recommend policy changes.

Philadelphia agreed in 2011 to court monitoring of their stop-and-frisk program to settle a lawsuit brought by the ACLU and others, who alleged police officers used racial profiling and stopped people with little or no justification. For example, an analysis of 2012 and 2013 stops and frisks revealed the rate of stops without reasonable suspicion for Black people was 6.5 percentage points higher than the rate for White people, indicating that police were using a higher threshold of "reasonable suspicion" for stops of White suspects. The suit was settled when the Philadelphia Police Department agreed to collect stop-and-frisk data and make it available in an electronic database. The settlement also requires that officers limit stops to when there is reasonable suspicion rather than vague rationales such as loitering or acting suspiciously.

## Findings

### **1. The SFPD's stated policies prohibiting biased policing are in line with best practices.**

The SFPD's policy on unbiased policing (DGO 5.17) tracks the language of the U.S. Department of Justice's (DOJ) consent decree with the Los Angeles Police Department (LAPD),<sup>65</sup> and goes further by adding religion, gender, age, sexual orientation, and gender identity to the list of characteristics that officers may not use in determining whether to initiate any law enforcement action in the absence of a specific suspect description.<sup>66</sup> A report submitted to the Mayor's Office in 2007 by Dr. Lorie Fridell found an earlier version of DGO 5.17 was a strong model because it provided for very narrow uses of factors, such as race and ethnicity, in making law enforcement decisions.<sup>67</sup>

The SFPD's plans to provide department-wide training on implicit bias, procedural justice, and racial profiling are also in line with training programs in other jurisdictions.<sup>68</sup> The SFPD Command Staff recently

62 NYCLU, New NYCLU Reports Reveal Historic Failure and Bias of Bloomberg Administration's Signature Public Safety Program (2014), <http://www.nyclu.org/news/new-nyclu-reports-reveal-historic-failure-and-bias-of-bloomberg-administrations-signature-public-safety-program>.

63 Floyd v. City of N.Y., 959 F. Supp. 2d 540, 605, 660-63 (S.D.N.Y. 2013).

64 ACLU of Illinois, Stop and Frisk in Chicago 3 (2015), [http://www.aclu-il.org/wp-content/uploads/2015/03/ACLU\\_StopandFrisk\\_G.pdf](http://www.aclu-il.org/wp-content/uploads/2015/03/ACLU_StopandFrisk_G.pdf).

65 See Consent Decree ¶ 103, *United States v. City of L.A.*, No. 2:00-cv-11769-GAF-RC (C.D. Cal. June 15, 2001) (prohibiting use of "race, color, ethnicity, or national origin (to any extent or degree) in conducting stops or detentions, or activities following stops or detentions, except when engaging in appropriate suspect-specific activity to identify a particular person or group").

66 See SFPD Department General Order 5.17.

67 Fridell, Fair & Impartial Policing, supra note 50, at 7.

68 See, e.g., Mike Blaskey, *Oakland Police Becoming Example for Departments Seeking to Reform*, Santa Cruz Sentinel (May 10, 2015), [http://www.santacruzsentinel.com/article/ME\\_20150509\\_NEWS\\_150510652](http://www.santacruzsentinel.com/article/ME_20150509_NEWS_150510652); Matt Zapototsky, *In Push to Reform Police Work, Officers Examine Their Own Biases*, Wash. Post (Jan. 6, 2016), [http://www.washingtonpost.com/local/public-safety/reform-police-work/officers-examine-their-own-biases/2016/01/06/b196anfrz/2831d1e6-9c40-11e6-65818003a990\\_story.html](http://www.washingtonpost.com/local/public-safety/reform-police-work/officers-examine-their-own-biases/2016/01/06/b196anfrz/2831d1e6-9c40-11e6-65818003a990_story.html).

received implicit bias training as part of city-wide training. According to a recent post by SFPD's "Not On My Watch" campaign, all Police Academy recruits are now required to participate in implicit bias training, and all SFPD officers will receive implicit bias and procedural justice training by the end of 2016.<sup>69</sup> The SFPD is pursuing a contract that would give all officers and staff implicit bias and procedural justice training every other year, and online training in the off years. This would include "cultural competency" training provided by community members. The SFPD has also reinstated racial profiling training for all officers, which was previously offered but then limited to an academy class in 2005. While this list of training programs sounds impressive, the SFPD refused the Panel's request for any of the materials used at the trainings or any evaluations of their efficacy, making it impossible to determine the impact of these trainings.

## **2. Available statistics indicate racial disparities in SFPD stops, searches, and arrests.**

The statistics available to the Panel suggest there are racial disparities regarding SFPD stops, searches, and arrests, particularly for Black people. According to 2013 findings from the W. Haywood Burns Institute, Black adults in San Francisco are more than seven times as likely as White adults to be arrested.<sup>70</sup> Moreover, the disparity gap in arrests was found to have been increasing in San Francisco, whereas it was decreasing statewide. In San Francisco, rates of arrest were higher for Black adults than White adults for every offense category, and between 1994 and 2013 the disparity gap increased for every drug offense category despite overall reductions in rates of arrest for drug offenses. The disparity gap in arrest rates was even higher for Black women. According to an April 2015 report from the Center on Juvenile and Criminal Justice, Black women in San Francisco were arrested at rates 13 times higher than women of other races.<sup>71</sup>

Analysis of public SFPD arrest data from the California DOJ's Criminal Justice Statistics Center (CJSC) for the period 2005-2014 shows that 43 percent of all arrests during that period were of Black people.<sup>72</sup> This roughly corresponds to the figures reported in an undated "Racial Profiling Assessment" presented to the Police Commission by the SFPD.<sup>73</sup> The figure was even higher for juvenile arrests, where 52 percent of all juvenile arrests were of Black people under 18 years old.<sup>74</sup> During the same period, the CJSC data shows that 44 percent of arrests were of White people (Hispanic people were included in this category) and 13 percent were of other races.

The SFPD's "Racial Profiling Assessment" also includes a summary of recent E585 data, which shows the following rates of traffic stops by racial group during the period 2011-2014: White (40 percent); Black (16 percent); Hispanic (14 percent); Asian (18 percent); and Other (12 percent). In February 2016, the SFPD published on its website the following rates of traffic stops by racial group for 2015: White (36 percent); Black (15 percent); Hispanic (13 percent); Asian (17 percent); and Other (19 percent). SFPD published the following rates for 2014: White (38 percent); Black (14 percent); Hispanic (13 percent); Asian (18.5

69 Not On My Watch, S.F. Police Dep't, SFPD Confronts Prejudice with "Not On My Watch" Campaign, (2016), <http://www.sfpd.ca.gov/police/not-on-my-watch-campaign>.

70 Burns Inst. for Juvenile Justice Fairness & Equity, S.F. Justice Reinvestment Initiative: Racial & Ethnic Disparities Analysis for the Reentry Council: Summary of Key Findings (2013), <https://www.wburns.org/reentry-reinvestment-initiative/racial-and-ethnic-disparities-analysis-SUMMARY-of-FINDINGS.pdf>.

71 Michael Males, Ctr. on Juvenile & Criminal Justice, San Francisco's Disproportionate Arrest of African American Women Persists (2015), [http://www.cjjr.org/uploads/cjjr/documents/disproportionate\\_arrests\\_of\\_african\\_american\\_women\\_persists.pdf](http://www.cjjr.org/uploads/cjjr/documents/disproportionate_arrests_of_african_american_women_persists.pdf).

72 CJSC statistics on arrests are available at <http://www.ojp.usdoj.gov/bjs/cjcs/2015/arrests.html>.

73 The figures in SFPD's "Racial Profiling Assessment" were slightly higher, showing 47 percent of "all arrests" for the period 2009-2014 were of Black people. See Introduction at page 10 for more on the Panel's Public Records Act request to the SFPD.

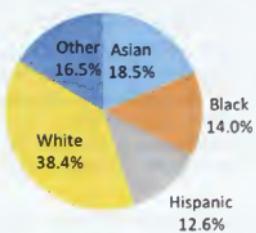
74 The figures in SFPD's "Racial Profiling Assessment" were again higher, showing 62 percent of "all juvenile arrests" for the period 2009-2014 were of Black juveniles.

percent); and Other (16.5 percent).<sup>75</sup> For context, 2014 census data shows that San Francisco's population is 41.2 percent White, 5.8 percent Black, 15.3 percent Hispanic, and 34.9 percent Asian.

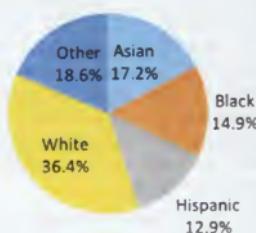
Experts, such as Dr. Fridell, have cautioned against drawing hard conclusions about biased policing when analyzing stop data based on census data alone and without an appropriate "benchmark" or comparison group.<sup>76</sup> According to Dr. Fridell, current best practices regarding data collection and analysis suggest it is easy to look at disparities in numbers but hard to parse out the causes of disparities.<sup>77</sup> One suggestion is to focus on the search "hit rate" (i.e., the rate at which searches turn up contraband).<sup>78</sup> If there is a lower hit rate for searches of one racial group compared to other racial groups, that suggests the police cast a "wider net" when it comes to that racial group (i.e., the police are performing searches of that racial group with lower levels of evidence). As discussed further below, given the complexity of conducting a meaningful analysis of stop data, other cities have engaged outside researchers and consultants to analyze their police departments' data.

Analysis of the SFPD's publicly available E585 data confirms the above percentages for 2014 and 2015.<sup>79</sup>

**2014 Traffic Stops by Race**



**2015 Traffic Stops by Race**



<sup>75</sup> Notably, the E585 data for 2014 included in SFPD's "Racial Profiling Assessment" differs from the traffic stop data recently released on SFPD's website, which shows a higher number of stops for all racial groups. S. F. Police Dep't. Data. Traffic Stops by Race and Ethnicity (2014-2015), <http://sanfranciscopolis.org/unit/analysis/race-and-ethnicity/>. A possible explanation is that the figures on SFPD's website include "Crossroads" data, which is E585 data collected on mobile devices through a pilot project launched in 2013. See Max A. Cherney, *Farewell Ticket Books: SFPD to Use Mobile Devices to Issue Tickets, File Collision Reports*, S.F. Appeal (June 13, 2013), <http://sfappeal.com/2013/06/farewell-ticket-books-sfpd-to-use-mobile-devices-to-issue-tickets-file-collision-reports/>. However, even accounting for the absence of Crossroads data in SFPD's "Racial Profiling Assessment," the data on SFPD's website still shows a slightly higher number of stops across all racial groups. A more recent (but still undated) version of SFPD's "Racial Profiling Assessment" includes revised figures for 2014 that conform to the figures published on SFPD's website, and also includes 2015 figures.

<sup>76</sup> Dr. Fridell has written extensively about the importance of benchmarking in analyzing stop data. See, e.g., Fridell, *Fair & Impartial Policing*, *supra* note 50, at 60 n.49.

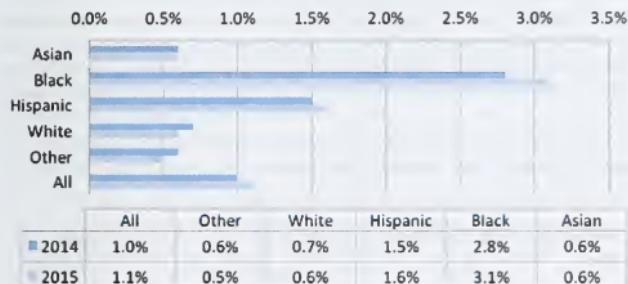
<sup>77</sup> See also Liam Dillon, *The Promise, and Problems, That Come with Police Data*, Voice of San Diego (Jan. 17, 2014), <http://www.voiceofsandiego.org/racial-profiling-2/the-promise-and-problems-that-come-with-police-data/>.

<sup>78</sup> Lorie Fridell, Police Exec. Research Forum, By the Numbers: A Guide for Analyzing Race Data from Vehicle Stops 216-18 (2004), [http://www.cops.usdoj.gov/html/d\\_d\\_rim/Mayors%20d\\_pubs/ExecutiveSummaryFinal.pdf](http://www.cops.usdoj.gov/html/d_d_rim/Mayors%20d_pubs/ExecutiveSummaryFinal.pdf).

<sup>79</sup> Publicly available E585 data for 2014 and 2015 were obtained from SFPD's Data website available at <http://sfpolice.org/records/data#trafficstops>.

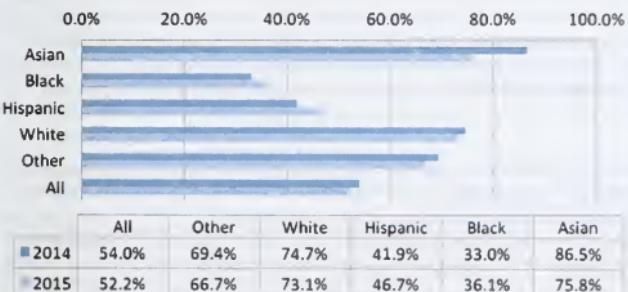
Further analysis of the data shows that Black and Hispanic people were more likely to be searched than any other group following a traffic stop. Of those stopped in 2015, searches were conducted on 1.1 percent of Asian people, 13.3 percent of Black people, 5.3 percent of Hispanic people, 1.7 percent of White people, and 1.3 percent of "Other" races/ethnicities. Black and Hispanic people also had the highest rates of searches without consent.<sup>80</sup> As a result, although Black people accounted for less than 15 percent of all stops in 2015, they accounted for over 42 percent of all non-consent searches following stops.<sup>81</sup>

### Searches Without Consent After Stops (2014-2015)



Of all people searched without consent, Black and Hispanic people had the lowest "hit rates" (i.e., the lowest rate of contraband recovered). The disparities in search hit rates, shown in the chart below, suggest the SFPD performs non-consensual searches of Black and Hispanic people with lower levels of evidence than for other racial or ethnic groups. According to Dr. Fridell, "[a] lower hit rate for ethnic minorities is a red flag for bias."<sup>82</sup>

### Hit Rates for Searches Without Consent After Stops (2014-2015)



<sup>80</sup> Excluded from searches without consent / non-consent searches are (1) searches as a result of probation or parole condition, (2) searches with consent, (3) searches incidental to arrest, and (4) vehicle inventories.

<sup>81</sup> Hispanic people accounted for 19 percent of all non-consent searches in 2015, although Hispanic people accounted for 13 percent of all stops. By contrast, of all non-consent searches in 2015 Asian people accounted for 9.6 percent, White people 20.9 percent, and Other races/ethnicities 8.3 percent, although of all stops Asian people accounted for 17.2 percent, White people 36.4 percent, and Other races/ethnicities 18.6 percent.

<sup>82</sup> Joaquin Palomino, *Racial Disparities in SF Traffic Searches Raise Concerns of Bias*, S.F. Chronicle (Apr. 8, 2016), [sfchronicle.com/crime/article/Racial-disparities-in-SF-traffic-searches-raise/7235690.php](http://sfchronicle.com/crime/article/Racial-disparities-in-SF-traffic-searches-raise/7235690.php).

For example, in 2014, officers recovered contraband only 33.0 percent of the time from Black people and 41.9 percent of the time from Hispanic people as a result of non-consent searches. On the other hand, officers recovered contraband 74.7 percent of the time from White people and 86.5 percent of the time from Asian people as a result of non-consent searches. Dr. Fridell stated that a similar finding by the *San Francisco Chronicle* "implies that when police search Whites and Asians, they're pretty darn sure they're going to find something" and the data suggests "there's a wider net being cast and a lower level of proof (required) before initiating a search of African Americans and Latinos."<sup>83</sup>

The *San Francisco Chronicle*'s analysis of searches with consent from 2013 to 2015 showed many of the searches conducted with consent were concentrated in the Bayview. It further found Black people were eight times more likely to be searched with consent than White people after traffic stops, and Hispanic people were searched with consent at almost four times the rate of White people.<sup>84</sup> However, the data on searches conducted with consent does not include data on how many requests for consent searches were declined.<sup>85</sup>

Based on the reasons recorded for stops, Black people were the least likely of any racial group to be stopped for a moving violation in 2014 and 2015,<sup>86</sup> and had a higher likelihood than any other racial group of being stopped and cited for mechanical or other nonmoving violations.<sup>87</sup>

### **3. Community members and others have experienced bias in SFPD stops, searches, and arrests of people of color.**

Some SFPD officers have not followed the department's recommendations on preventing perceptions of biased policing. In December 2015, the Federal Public Defender's Office for the Northern District of California filed a discovery motion in a case involving arrests made during joint narcotics sweeps of the Tenderloin by SFPD officers and agents from the Drug Enforcement Administration in 2013 and 2014, referred to as "Operation Safe Schools."<sup>88</sup> The motion cites numerous instances of SFPD officers using racial slurs, acting in a sexually inappropriate manner toward Black women, and committing acts of violence against Black people. Moreover, use of racially inappropriate language and conduct was documented in videos of Operation Safe Schools' investigations.<sup>89</sup> All 37 defendants in the case are Black, even though the racial demographics of people who sell drugs in the Tenderloin are diverse.<sup>90</sup>

Among some members of the public, there appears to be a perception of bias in SFPD stops, searches, and arrests regarding people of color, specifically Black and Latino people. Despite the SFPD's stated policy prohibiting biased policing, witnesses repeatedly attested that the SFPD exhibits bias when conducting stops, searches, and arrests. One community leader stated that "an antagonistic, biased culture pervades and is taught in the SFPD," and several others opined in substance that SFPD officers do not appear to

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Consent searches themselves have come under scrutiny for potentially leading to biased outcomes. See, e.g., ACLU of Illinois, *Racial Disparity in Consent Searches and Dog Sniff Searches: An Analysis of Illinois Traffic Stop Data from 2013*, [www.aclu.org/racial-disparity-in-consent-searches-and-dog-sniff-searches](http://www.aclu.org/racial-disparity-in-consent-searches-and-dog-sniff-searches).

<sup>86</sup> The options for reasons for stops in the SFPD E585 forms include (1) moving violation, (2) mechanical or non-moving violation, (3) DUI check, (4) penal code violation, (5) MPC violation, (6) BOLO/APB/Warrant, (7) traffic collision, or (8) assistance to motorist. Of those stopped in 2014, the percentages stopped for moving violations were as follows: Whites (69.4 percent), Blacks (52.7 percent), Hispanics (59.7 percent), Asians (68.7 percent), and Other (77.7 percent). Of those stopped in 2015, the percentages stopped for moving violations were as follows: Whites (71.3 percent), Blacks (54.2 percent), Hispanics (62.0 percent), Asians (71.5 percent), and Other (80.5 percent).

<sup>87</sup> Of those stopped in 2014, the percentages stopped for mechanical or nonmoving violations were as follows: Whites (29.2 percent), Blacks (45.5 percent), Hispanics (37.1 percent), Asians (29.7 percent), and Other (20.5 percent). Of those stopped in 2015, the percentages stopped for mechanical or nonmoving violations were as follows: Whites (27.3 percent), Blacks (41.5 percent), Hispanics (35.0 percent), Asians (27.6 percent), and Other (18.3 percent).

<sup>88</sup> Mot. to Compel at 61-69, *United States v. Mumphrey*, No. 3:14-cr-00643-EMC (N.D. Cal. Dec. 2, 2015).

<sup>89</sup> *Id.* at 4.

<sup>90</sup> *Id.* at 13-22; see also Chris Roberts, Operation "Safe from Black People," *S.F. Weekly* (Feb. 24, 2016), [www.sfweekly.com/sanfrancisco/news-drugs-tenderloin-operation-safe-schools-stop-does-black-lives-matter](http://www.sfweekly.com/sanfrancisco/news-drugs-tenderloin-operation-safe-schools-stop-does-black-lives-matter); Comment Card #4501-53.

view Black and Latino people as human beings. These witnesses acknowledged that the perception of such bias is a national issue in police departments and is not limited to the SFPD.

A community member of color who interfaces with the SFPD as a city commission member and director of a community-based organization recalled a recent incident in which she was pulled over by SFPD officers after picking up her teenage son from a concert late at night. She said there was no reason for the officers to pull her over, but it is what she expects, and she could see the disappointment on the officers' faces when they saw she was an "old mom." She has also seen young drivers in neighborhoods with public housing being pulled over and fully searched by SFPD officers, rather than just being issued a ticket—her perception of the typical experience of drivers in more affluent neighborhoods.

Witnesses shared countless anecdotes regarding unwarranted stops, searches, and arrests of Black and Latino youth (e.g., for jaywalking), and disproportionate stops, searches, and arrests in minority neighborhoods such as Bayview-Hunters Point, Mission, Tenderloin, and Western Addition. One witness implied that stops, searches, and arrests are disproportionately based on race, regardless of neighborhood, sharing an example of a young Black Uber driver who was recently stopped and detained by SFPD officers for alleged marijuana possession while waiting for a passenger in a parked car in Noe Valley.

A sampling of anecdotes recounted by witnesses and victims of alleged bias includes the following.

1. A Black man was leaning against a car in the Tenderloin waiting for his girlfriend who commutes to a job in another city. An SFPD officer in an unmarked SUV questioned him by asking—"What are you doing? How much longer will you be waiting? Are you on probation or parole?" The man walked away, but the officer told him to stop, tackled him, and found drugs on him. The police report acknowledged the officer did not see anything illegal but stated the man appeared nervous and refused to remove his hands from his pocket, so he was searched and arrested for officer safety. The key to the girlfriend's car was booked as evidence. Without the key, the girlfriend could not easily get to her job.
2. A young Black man claimed that he felt violated when he was inappropriately groped near Howard and Market Streets by an SFPD officer who claimed he was looking for drugs and a gun.
3. SFPD officers told a Black woman to "shut up" and threatened to arrest her when she questioned the officers while they were interviewing her child about an incident.
4. SFPD officers mistakenly believed that residents of a half-way house were breaking and entering—the Black suspects were handcuffed and placed in a patrol car, while the White residents stood nearby and were calmly questioned by police officers.
5. A Black San Francisco Municipal Transportation Agency driver was wrongfully stopped and detained after SFPD's Automatic License Plate Reader misread her license plate and indicated to the SFPD officer her vehicle was stolen. The officer, who was Asian, engaged in a high-risk stop: he ordered the victim from her car at gunpoint, and detained and questioned her. The witness strongly believes race was at play in the situation.<sup>91</sup>

These anecdotes were not limited to the Black community. Other witnesses say they have observed bias related to Latinos, stating SFPD officers assume they are gang members and/or undocumented. These witnesses said SFPD officers sometimes identify a group of friends as a "gang" because they happen to live in a particular area. According to witnesses, Latinos in those neighborhoods experience harassment by SFPD officers, such as being stopped and searched for no apparent reason.

A recent letter from the Racial Justice Committee of the San Francisco Public Defenders Office to the Board of Supervisors cited "a March 2015 tape-recording of a [SFPD] Gang Task Force sergeant talking to Bayview officers about how to file gang charges against a group of black men who had been rounded up

<sup>91</sup> This incident was the subject of a case that was settled in October 2015 for \$495,000 after the district court's grant of summary judgment to the officer was reversed on appeal. See *Green v. City & Cnty. of S.F.*, 751 F.3d 1039 (9th Cir. 2014).

[and detained] en masse, without reasonable suspicion or probable cause.”<sup>92</sup> According to the letter, the sergeant told arresting officers to put gang charges on one of the men, who he did not know to be a gang member, in order to “hold him in custody” and because “he’s up there with all of them.” In addition to the incident cited in this letter, San Francisco and federal public defenders observed that some of their clients of color have been stopped and searched based on questionable or limited information (e.g., suspect was a Black male wearing a hoodie).

According to Community United Against Violence (CUAV), a nonprofit that works with transgender people in the city, the organization gets at least one complaint every week from LGBT people who say they have been harassed or wrongfully arrested by SFPD officers.<sup>93</sup> A CUAV representative observed that bias by the SFPD plays out in two primary ways.

1. First, many of CUAV’s members have encountered verbal abuse and other “non-courteous behavior” from the police.
2. Second, many members have complained the police failed to respond adequately to emergency calls because of bias. For instance, in the situation of an officer responding to a domestic-violence incident involving a transgender female, the officer may use insults or “mis-gender” (e.g., refer to the transgender woman as “he”). The officer may respond to the call insufficiently, such as refusing to treat it as a domestic-violence complaint and instead viewing it as just “two men fighting” or arresting both parties. The officer may also not take the call seriously and fail to take action.

According to a SFPD officer assigned to the Tenderloin district, the SFPD does not engage in racially biased stops, searches, or arrests. He pointed out the high percentage of minorities in the neighborhood he patrols as a reason officers in his district might stop a high proportion of minorities. Another SFPD officer disagreed and explained the department has a culture of “arrest everyone, take everyone to jail, [and] take names later,” because the department values officers who bring in the most arrests. The officer, who is Black, further stated, “the racist culture is deeply rooted and goes back years and years.” That officer relayed the story of SFPD officer Lorenzo Adamson, a Black off-duty officer who was stopped by White officers in Bayview.<sup>94</sup> Instead of asking for his license and registration, the off-duty officer was asked, “Are you on probation or parole?” The officer recounting this story also shared that when officers make pretextual stops of Black men and release them, they think that “at least he is in the system now, so when he commits that crime, we got him.” The officer further stated that police interactions differ by neighborhood, sharing that police in some neighborhoods stop individuals who may not match a suspect’s description. He explained: “I don’t like to do the race thing, but it’s real. If a suspect description is an unknown male, or even Black male, officers may stop someone that really doesn’t fit the description at all; you shouldn’t stop a white Honda when the description is a green Chevy.”

#### **4. Community members have expressed concern that the SFPD does not engage in community policing.**

Witnesses consistently stated that the SFPD engages in aggressive policing practices rather than community policing.<sup>95</sup> Some witnesses described SFPD as an “occupying force” in Bayview-Hunters Point—“warriors” as opposed to “guardians.” A former SFPD officer stated the department often engaged in a more aggressive approach to policing, despite claims it provides a community-policing approach. In 2014, the San Francisco National Association for the Advancement of Colored People (NAACP) submitted a best practices plan to the SFPD and the Police Commission (SF NAACP Three-Point Plan), which recommended

92 Letter from Racial Justice Committee to San Francisco Board of Supervisors (May 3, 2016).

93 Hemmelgarn, SF Supes Address Trans Concerns on Police, *supra* note 53.

94 Vivian Ho, S.F. Cop Says He Was Racially Profiled, SFGate (June 4, 2013), <http://www.sfgate.com/news/article/S-F-Cop-Says-He-Was-Racially-Profiled-4576864.php>.

95 Witnesses did not offer a unified definition of community policing, but reduced officer turnover, increased foot and bike patrols, and proactive coordination between SFPD and community leaders were cited as examples.

(1) sensitivity training, (2) community policing, and (3) aggressive recruitment of Black personnel.

A current SFPD officer stated some neighborhoods, such as the Bayview district, have higher crime rates and are policed more aggressively as a result. He contrasted the number of "criminals" in the Bayview district with the Richmond district, Sunset district, Pacific Heights, and Chinatown, and stated disparities in the SFPD's policing styles in different neighborhoods can be explained by varying crime statistics for those neighborhoods.

The following anecdotes are a sampling of those shared by witnesses and other community members regarding a perceived lack of community policing.

1. A witness stated SFPD officers routinely damage property or take personal items belonging to suspects of color (e.g., by towing cars and booking bike messengers' bikes). These items can be difficult to retrieve, and their confiscation by the SFPD creates "huge economic burdens on people who are already struggling to make it."
2. Witnesses stated SFPD officers routinely antagonize youth of color. For instance, a member of SFPD's Gang Task Force was "egging on" a 13-year old in the Bayview (e.g., "Did you see what so and so said about you on Instagram? Are you going to let him get away with that?"). This conversation occurred prior to the 13-year old shooting another child.
3. Another witness observed that SFPD officers at Northern Station know nothing about the churches in the community and typically are not residents of the community.

The department has recently made some efforts in this regard. The "Not On My Watch" campaign recently launched by former Chief Suhr is "aimed at rooting out potential bigotry and intolerance among San Francisco police officers by promoting diversity in recruitment, bias training, community involvement and a first-of-its-kind pledge that department officers have been making."<sup>96</sup> According to the SFPD, it is aggressively recruiting police officers from a variety of cultural backgrounds to help the department reflect the city's demographic makeup, including recruiting in the city's multicultural neighborhoods.<sup>97</sup> The SFPD currently has a cadet program<sup>98</sup> through which it has provided more than 1,400 jobs to young people, mainly in communities of color.<sup>99</sup> According to former Chief Suhr, the current Police Academy class has nine Black recruits out of 50, which he described as a "huge" increase.

A number of witnesses expressed their belief that community policing can have a positive impact on community-police relations. A community member engaged in community-policing efforts stated that some of the SFPD officers involved in the efforts have expressed that the young people they interact with changed. She pointed out that it is not the kids who changed, but the officers' perspective. A current SFPD officer who has focused on building trust with the community he serves stated community members inform him of crimes because of the relationships he has created. A Black SFPD member opined, however, that the department has no respect for community policing. He stated community policing is only starting to be implemented because of national media coverage on policing, saying "the department is being forced to pretend to at least put policies in place to say that we're doing something because it's in the limelight. There's resentment from everybody I speak to—they don't want change to occur."

## **5. The SFPD may use confrontational and intrusive policing tactics in certain neighborhoods.**

Several witnesses reported aggressive policing in neighborhoods with large concentrations of Black and Latino residents, including the Western Addition, Tenderloin, Bayview/Hunters Point, Mission, and Excelsior. For example, in the Tenderloin, certain officers—"always the same ones"—would enter single-occupancy hotel rooms by obtaining a key from hotel management and later falsely claiming that they had the occupant's consent to search. In the Mission, one officer was known to pick up gang members wearing

<sup>96</sup> SFPD Confronts Prejudice with "Not On My Watch" Campaign, *supra* note 69.

<sup>97</sup> Although as demonstrated in Chapter 2: Personnel, the data do not necessarily support this assertion.

<sup>98</sup> San Francisco Police Cadet Program, S.F. Police Dep't, <http://www.sf-police.org/index.aspx?page=401>.

<sup>99</sup> For more on SFPD hiring, see Chapter 2: Personnel.

their gang color, drive them to a rival gang's territory, and leave them. Further, youth of color in these areas were reportedly often put into the juvenile justice system for possession of marijuana while White youth received only a warning. This approach to policing has led many members of the community to view the police with mistrust, and community members are therefore reluctant to aid police investigations.

A current city official stated that youth in certain neighborhoods may also be misunderstood simply because of cultural differences, which create additional challenges. The official recounted a situation in which a Black teenager in conversation with an officer was getting very animated, and the officer started getting jumpy. The officer didn't draw his weapon, but the official was unnerved, sensing that the tension exhibited by the officer made everyone else more uncomfortable. The city official told this story as an example of a "cultural disconnect" with officers who did not grow up around Black communities, and/or have not been around poor people.

A commissioner expressed concern about the department's use of the Ingleside, Bayview, and Tenderloin districts as new officer training grounds. This practice requires new officers to enter unfamiliar neighborhoods and this may have an adverse impact on those communities; their inexperience may contribute to biased policing. A community leader echoed this view, stating that there is high officer turnover at the Northern and Bayview Stations, but not at, for example, Haight-Ashbury or Financial District-area stations. According to this leader, the SFPD assigns "neophytes" to stations at Bayview and Northern Station to "give them an exercise in ticket writing and stopping Black folks." Police officers working at the Northern and Bayview-Hunters Point Stations, according to this witness, do not see African-Americans "as humans" and seem to "protect against African-Americans." He stated that these are some of the reasons why these communities have conflicts with the SFPD. A retired Officers for Justice (OFJ) officer who has remained active with the police independently confirmed this view, stating that the SFPD uses Black neighborhoods as training locations to train recruits in aggressive policing techniques. These practices further reduce trust between SFPD officers and the Black community.

## **6. The SFPD's current traffic stop data collection program is outdated and inconsistent.**

Although the contents of the E585 form represented "good practice" when it was developed in 2001, it was outdated soon thereafter.<sup>100</sup> Dr. Fridell flagged this issue in her March 2007 report, but the E585 form still does not appear to have been updated to collect additional information beyond the limited categories included when it was developed.<sup>101</sup> Moreover, other cities, such as Oakland, have broader stop data collection requirements that apply to all stops, not just traffic stops.

## **7. A recently passed city ordinance requires data collection for all encounters and regular analysis and reporting of data.**

Ordinance No. 166-15, approved in September 2015 and described above, expands the SFPD's data collection requirements to all encounters, and mandates regular reporting and analysis of the data. It also requires the SFPD to track and report complaints of bias filed with the OCC. Full compliance with the reporting requirements is not due until June 2017, and it is unclear when the SFPD will begin to collect the underlying data required by the ordinance.

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<sup>100</sup> See Fridell, Fair & Impartial Policing, *supra* note 50, at 72.

<sup>101</sup> See S.F. Police Dep't Bulletin No. 14-059 (Mar. 3, 2014).

## **8. The SFPD has not consistently collected traffic stop data.**

Despite the SFPD's policy requiring collection of traffic stop data, compliance with the policy has been lacking. In her 2007 report, Dr. Fridell noted that court records from 2005 indicated that SFPD issued 111,000 traffic citations for moving violations, but only 70,000 traffic stops were reported through E585 forms that year. This is despite the fact that there should be more E585 forms than citations because E585 forms are supposed to be submitted for all stops including those that do not result in citations. Dr. Fridell found that "there was no consistent system to facilitate officer compliance."<sup>102</sup>

It does not appear as though the SFPD has made much progress on this issue. In 2014, during the investigation of a complaint involving a traffic stop, OCC investigators found evidence<sup>103</sup> suggesting that officers in a specialized SFPD unit failed to record traffic stop data for 76 percent of the vehicle stops they made.<sup>104</sup> While failure to collect traffic stop data generally accounts for about a third of all sustained OCC complaints, it appears that only a fraction of such failures are discovered, as such policy violations only accounted for 15 of the 58 OCC cases with sustained findings (26 percent) in 2014, and only 15 of 43 OCC cases with sustained findings (35 percent) in 2013.<sup>105</sup> The small number of sustained complaints clearly reflects only a small fraction of all traffic stops. OCC Executive Director Joyce Hicks stated in the media that the number of missing entries of stop data is likely much higher, noting they can only identify the failure to collect traffic stop data when an individual complains about a traffic stop and the OCC cannot find a record of it.<sup>106</sup>

Former Chief Suhr imposed a system of "progressive discipline" for officers who repeatedly failed to collect E585 data.<sup>107</sup> That is, consistent failures to enter data resulted in increasingly severe punishments, starting with an admonishment (which is not considered punishment), then a one-day suspension, then a five-day suspension, and then a 10-day suspension. The former Chief used the threat of sending the case to the Police Commission as a deterrent. According to the Police Commission's Veronese Reports, which give skeletal information about discipline cases the Police Commission hears, the Police Commission has heard only one case involving failure to collect traffic stop data in the past five years, and that case originated in the OCC.<sup>108</sup>

## **9. The requirements of the SFPD's current traffic stop data collection program are unclear.**

SFPD officers and OCC investigators have found the language of DB 14-059 confusing, but the department does not appear to have issued any revised department bulletins to clarify the requirements of its traffic stop data collection program. DB 14-059 itself was adopted in March 2014 to specifically include pedestrians stopped for moving violations in the E585 data collection program.<sup>109</sup> However, in response to a May 2014 OCC complaint that an officer failed to collect E585 data, the officer stated that it was difficult to understand whether traffic stop data should be collected when stopping someone who is not in a vehicle, such as a pedestrian cited for jaywalking, because DB 14-059 specifically states that entries

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102 Fridell, Fair & Impartial Policing, *supra* note 50, at 6.

103 See Chapter 5: External Oversight for more detail on OCC findings related to the failure to collect traffic stop data.

104 Office of Citizen Complaints, City & Cnty. of S.F., 2014 Annual Report, App'x A at 60 (May 13, 2015), [http://stgovr.sfgov.org/sites/default/files/OCC\\_2014.pdf](http://stgovr.sfgov.org/sites/default/files/OCC_2014.pdf) [hereinafter OCC 2014 Annual Report]. The unit's supervising officer "stated that he was unable to access the E585 entries made by the officers he supervised and thus could not determine whether the officers were complying with department requirements concerning traffic stop data collection." *Id.*

105 *Id.* at 22.

106 Joaquin Palomino, SFPD Traffic Stop Data Show Signs of Gaps, S.F. Chronicle (Apr. 8, 2016), <http://www.sfgate.com/politics/article/SFPD-traffic-stop-data-show-signs-of-gaps-7235674.php>.

107 See, e.g., OCC 2014 Annual Report, *supra* note 104, at 22.

108 S.F. Police Comm'n, Report of Disciplinary Actions (2012), No. IVF C12-035, <http://sfraincences.muniapps.sfgov.net/Shared%20Documents/PoliceCommission/PoliceCommission-DisciplinaryActions-2012.pdf>.

109 OCC 2014 Annual Report, *supra* note 104, at 24 n.11. The previous version, DB 13-091, was adopted in May 2013 to include bicycles stopped for moving violations in the E585 data collection program, after former Chief Suhr disagreed with the OCC's sustained finding of an officer's failure to collect E585 data while conducting a traffic stop of a bicyclist. Former Chief Suhr found a "Policy Failure" because SFPD's data collection policy (then DB 11-097) specifically referred to vehicles, not bicycles, and the officer was not disciplined. *Id.*

are to be made for "vehicle stops."<sup>110</sup> The OCC found this explanation reasonable in light of DB 14-059's "confusing language," which it recommended the department revise in its April 2015 findings. Just a few months later, in July 2015, the OCC made the same recommendation following its investigation of a January 2015 OCC complaint, when an officer provided the same explanation for failing to collect E585 data.<sup>111</sup> Despite these recommendations, the department did not provide any revised department bulletins on traffic stop data collection.

## **10. The SFPD has not regularly analyzed its stop data.**

The Panel found only one SFPD analysis of its stop data, in the "Racial Profiling Assessment" discussed above, which contained a summary of traffic stops by race for the period 2011-2014.<sup>112</sup> The Panel initially did not find publicly available sources of the SFPD's E585 data, and was only able to obtain E585 data for the period 2010-2015 after submitting a request for the data underlying the "Racial Profiling Assessment" presentation. The presentation also included a summary of arrest data for the period 2009-2014, but the SFPD did not provide the underlying arrest data in response to a public records request. Following the Panel's request, the SFPD has started to post its annual E585 data on its website as part of the White House Police Data Initiative. The SFPD website currently displays data for 2014 and 2015.<sup>113</sup>

Other cities have engaged outside researchers and consultants to analyze their police departments' stop data. Los Angeles engaged a consulting firm to analyze its police department's pedestrian and vehicle stop data to determine whether there was evidence of racially biased policing.<sup>114</sup> San Jose set aside \$125,000 for a consultant to conduct an independent analysis of its police department's traffic stop data.<sup>115</sup> Oakland hired Dr. Jennifer Eberhardt of Stanford University to go over its police department's stop data. Dr. Eberhardt's team is using the data to determine why there are racial disparities in Oakland, where 59 percent of all stops carried out by the Oakland Police Department (OPD) from April 2013 to October 2014 were of Black people, who only make up 28 percent of Oakland's population.<sup>116</sup> The team has also been given access to OPD officers' BWC footage.

Oakland has a database with reports on a given officer's civilian interactions going back years—including the race of the suspect, the location of the stop, whether there was a search, and whether anything was found—as well as thousands of hours of BWC footage.<sup>117</sup> The database is designed to automatically scan an officer's records for red flags regarding implicit bias. San Jose will soon implement a system that can recover data on any police stop "in 90 seconds or less."<sup>118</sup> A former chief of police of another city noted

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110 Office of Citizen Complaints, City & Cnty. of S.F., Quarterly Reports, Second Quarter 2015, App'x at 9 (Sept. 9, 2015), [http://sfcoc.org/occ/sites/default/files/occ\\_2015.pdf](http://sfcoc.org/occ/sites/default/files/occ_2015.pdf) [hereinafter OCC 2nd Quarter 2015 Report]; see also Office of Citizen Complaints, City & Cnty. of S.F., Complaint Summary Report 91 (2015), [http://sfcoc.org/occ/sites/default/files/occ\\_14\\_2/openness.pdf](http://sfcoc.org/occ/sites/default/files/occ_14_2/openness.pdf).

111 Office of Citizen Complaints, City & Cnty. of S.F., Complaint Summary Report 102 (2015), [http://sfcoc.org/occ/sites/default/files/occ\\_07\\_15\\_openness.pdf](http://sfcoc.org/occ/sites/default/files/occ_07_15_openness.pdf).

112 In response to a public records request by the working group, SFPD produced what appears to be a more recent (but still undated) version of the "Racial Profiling Assessment." It has an additional summary of traffic stops by race for 2015, and the 2014 figures are substantially different from the figures in the earlier version (showing a higher number of stops for each racial category, lower percentages of stops of Blacks and Hispanics, and a higher percentage of stops of Whites). Only the 2014 version is available on the SFPD's website: S.F. Police Dep't, Racial Profiling Assessment: Arrests & Traffic Stops, <http://sfpd.sfgov.net/police/divisions/default/files/Final.pdf>.

113 S.F. Police Dep't, Data, *supra* note 35.

114 Analysis Group, Inc., Pedestrian & Motor Vehicle Post-Stop Data Analysis Report (2006), [http://www.analysisgroup.com/uploadedfiles/content/insights/cases/lapd\\_data\\_mobile\\_report\\_07\\_5\\_0.pdf](http://www.analysisgroup.com/uploadedfiles/content/insights/cases/lapd_data_mobile_report_07_5_0.pdf).

115 Tracy Kaplan, Robert Salonga, & Leigh Pointer, SJPD Data Show San Jose Cops Detained Greater Percentage of Blacks, Latinos, Mercury News (May 9, 2015), <http://www.mercurynews.com/2015/05/09/sjpd-data-show-san-jose-cops-detained-greater-percentage-of-blacks-latinos/>.

116 Darwin BondGraham & Ali Winston, OPD Still Appears to Be Targeting Blacks, East Bay Express (Feb. 4, 2015), <http://www.eastbayexpress.com/oakland/opd-still-appears-to-be-targeting-blacks>. Content ID#418536.

117 Adam Brinklow, San Francisco Dangerously Behind the Times on Police Oversight, S.F. Weekly (Jan. 21, 2016), <http://www.sfweekly.com/thesnitch/2016/01/21/san-francisco-dangerously-behind-the-times-on-police-oversight>.

118 *Id.*

that many progressive law enforcement agencies are using IA-Pro software that includes plugins such as Blue Team, which allows commanding officers to set flags for officers (e.g., an unusually high number of courtesy complaints, use-of-force complaints, or traffic stops).

#### **11. The SFPD has failed to report the number of Hispanic arrestees to the California Department of Justice.**

While the arrest data reported in the SFPD's "Racial Profiling Assessment" included five racial categories,<sup>119</sup> the arrest data the SFPD reported to the California DOJ only included three racial categories: Black, White, and Other. Although there is a separate category for "Hispanic" in the CJSC arrest data, the SFPD reported only one arrest of a Hispanic person for the period 2005-2014. Instead, it appears that the SFPD classifies Hispanic arrestees as "White."<sup>120</sup> SFPD has thus failed to report the number of Hispanic arrestees and inflated the number of White arrestees for the CJSC data.

According to SFPD's Chief Information Officer, Susan Merritt, the department is required to report its arrest data in accordance with the racial categories set by the Office of Management and Budget, which does not include "Hispanic."<sup>121</sup> Other police departments—including those in Oakland, Los Angeles, and San Jose—report the number of Hispanic arrestees to the California DOJ.

#### **12. The department's 849(b) release forms do not include demographic information and are kept only in hard copy.**

California Penal Code section 849(b) authorizes officers to release persons arrested without a warrant because of, among other reasons, insufficient grounds for making a criminal complaint against the person. SFPD is legally required to provide a record of release for persons released pursuant to Section 849(b). The Panel was able to obtain a copy of a blank 849(b) form, which officers are required to complete when releasing such persons. The form does not include any demographic information, and completed forms are kept only in hard copy.

Former Chief Suhr said the department will modify its 849(b) form to require demographic information, such as race. According to Director Merritt, the department plans to launch a pilot program next year to allow officers to enter 849(b) information on a smartphone app,<sup>122</sup> if the department gets funding.

#### **13. Field interview cards include demographic information and are maintained electronically.**

FI cards are supposed to be entered into the department's mainframe Computer Assisted Bay Area Law Enforcement (CABLE) system and pulled into its Crime Data Warehouse, although Director Merritt doubted that the cards are consistently entered. Information from the cards is theoretically used in solving subsequent crimes, but the department does not compile or analyze the demographic information they contain. According to Director Merritt, the department also plans to launch a pilot program next year to allow officers to complete FI cards on a smartphone app, subject to available funding.

#### **14. Body-worn cameras are predicted to reduce the number of citizen complaints and use-of-force incidents.**

Interviewees generally agreed BWCs will be beneficial for SFPD officers and the public, and believe both groups will behave better if they are being recorded. Some interviewees think BWCs also will help curb bias in stops, searches, and arrests. For example, a public defender in San Francisco stated that "a police officer wearing a camera knows his voice and conduct is being filmed and will behave as if on camera

<sup>119</sup> The categories are: Black, White Hispanic, White Non-Hispanic, Asian, and American Indian/Alaskan Native/Aleut/Pacific Islander

<sup>120</sup> See Shoshana Walter, SF Police Underreport Arrest Rates for Latinos, Asians, S.F. Chronicle (Aug. 15, 2012), <http://www.sfgate.com/news/article/SFPD-underreports-Latino-Asian-arrests-3785802.php>.

<sup>121</sup> Director Merritt explained that "Hispanic" is not considered a race, but rather an ethnicity.

<sup>122</sup> SFPD implemented department-issued smartphones in 2013.

and this provides a curb to bias." One SFPD officer expressed his view that BWCs will likely result in fewer citizen complaints. Another SFPD officer said that BWCs will show the public what officers face on a daily basis. In Rialto, California, the police department saw a 60 percent reduction in officer use-of-force incidents and an 88 percent reduction in citizen complaints after launching a BWC pilot program.<sup>123</sup>

One of the BWC policy working group members stated that while BWCs might highlight more incidents of bias, they will not necessarily address the issue of bias in stops, searches, and arrests. She feels that for the SFPD to make progress in addressing bias there must be more people in the department who think change is needed. She noted there is currently a lot of video footage of use-of-force incidents, but the problems persist, and she cited the case of Eric Garner as an example.

### **15. Body-worn camera footage will be used as evidence in legal and administrative proceedings.**

The BWC policy states it will help preserve evidence for use in criminal and administrative investigations (including disciplinary cases), civil litigation, officer performance evaluations, and to review police procedures and tactics as appropriate. Interviewees indicated that BWCs in other jurisdictions, such as Oakland, have provided evidentiary value in both internal investigation affairs and criminal matters. For example, an interviewee said that OPD has video footage of almost every complaint, which can be reviewed during internal investigations. In the past, there was insufficient evidence to prove or disprove allegations in internal investigations, but BWCs have filled in that evidentiary gap. Rank-and-file police officers in Oakland initially doubted the use of BWCs, but according to former Oakland Chief of Police Sean Whent,<sup>124</sup> BWC footage has supported the officers almost every time.

### **16. SFPD and POA members were disproportionately represented on the body-worn camera policy working group.**

Some members of the public expressed their view that the BWC policy working group included a disproportionately high number of police officers and low number of community representatives. Half of the BWC policy working group members were SFPD representatives, including a representative from every minority officer association, which are under the umbrella of the POA.<sup>125</sup> The San Francisco Public Defender's Office was not initially included in the working group and had to petition to be included in the drafting process. Some members of the working group suggested that the DA's Office should have been included in the working group as well. A few interviewees felt that the POA had too much influence on the working group.

### **17. Members of the body-worn camera policy working group disagreed over the issue of officer review of footage.**

According to members of the BWC policy working group, the initial draft policy was put together by the SFPD using policies from other jurisdictions, such as Oakland. The working group then proceeded by noting where they agreed or disagreed with the initial draft policy.

The BWC policy working group members largely agreed on the contents of the draft policy, but there was disagreement regarding when officers should be allowed to review BWC footage before giving a statement or writing a report. According to interviewees, some of the officer representatives thought that officers should be allowed to review BWC footage in all circumstances. Some members of the working group

<sup>123</sup> William Farr, *Operation Candid Camera: Rialto Police Department's Body-Worn Camera Experiment*, Police Chief Mag. (Jan. 25, 2014), <http://nationalpolice.com/drive/Operation-Candid-Camera-Rialto-Police-Department---CJ-501-Q3-Body-Worn-Camera-Experiment-012514.html>.

<sup>124</sup> Whent resigned as Oakland Chief of Police in June 2016. See Rachel Swan, *Sean Whent Is Out As Chief of Police*, S.F. Chronicle (Jun. 10, 2016), <http://www.sfgate.com/bayarea/article/Sean-Whent-Is-Out-as-Oakland-Chief-of-Police-12371300.php>.

<sup>125</sup> None of the SFPD representatives on the BWC policy working group accepted interview requests.

supported allowing officers to review BWC footage after giving an initial statement, and then submitting a supplemental statement.

The draft policy presented to the Police Commission initially prohibited officer review if the officer "is the subject of the investigation in any of the following circumstances that were captured by the BWC": (1) an officer-involved shooting or in-custody death, (2) criminal investigation, or (3) at the discretion of the Chief of Police or his or her designee. The draft BWC policy approved by the Police Commission in December 2015 retained these carve-out circumstances and added another provision that permitted officer review even in the first two circumstances at the discretion of the Chief of Police or his or her designee.

During the meet and confer process, the draft policy was modified to allow officer review "[f]ollowing any (1) officer-involved shooting, (2) in-custody death, or (3) criminal matter," but only if the officer provides an initial statement before reviewing the recording.<sup>126</sup> The policy provides that the initial statement "shall briefly summarize the actions that the officer was engaged in, the actions that required the use of force, and the officer's response." After giving an initial statement, the officer "shall have an opportunity to review any audio or video recordings depicting the incident with his or her representative or attorney prior to being subject to an interview." The Chief's discretion to permit or prohibit officer review was removed from the policy.

One Police Commissioner expressed concern regarding the lack of clarity regarding the parameters of an officer's initial statement, and another expressed concern about the lack of officer questioning.<sup>127</sup> The ACLU position is that officers should be required to make a full and complete statement before viewing BWC footage and then make a supplemental statement, if necessary. The Police Commission will review the BWC policy six months after its implementation and decide if it needs to be revised.

## **18. The Risk Management Office will monitor compliance with the body-worn camera policy.**

A current Police Commissioner predicted that the biggest challenge with the BWC policy will be monitoring SFPD officer compliance with the policy. He noted that other cities where BWC policies have been implemented have seen low compliance rates. The BWC policy provides that the SFPD Risk Management Office is the BWC program administrator, and its duties include conducting periodic and random audits of BWC recordings for SFPD members' compliance with the policy.

## **19. There is anecdotal evidence that some members of the SFPD engage in stop-and-frisk detentions, contrary to official SFPD policy.**

According to the SFPD, the department does not practice stop-and-frisk detentions. The department's official protocol is to conduct pat-checks only to ensure a police officer's safety. Some witnesses expressed the view that SFPD employs unlawful stop-and-frisk practices that lead to racial profiling and disproportionately impact people of color, particularly Black and Latino males. For example, San Francisco Public Defender Jeff Adachi opined "[B]lack and Latino men in San Francisco are subject to unjustified searches all the time."<sup>128</sup> Another San Francisco public defender said Black males report being subjected to a SFPD practice referred to as "hop outs," which usually involve three undercover officers who all "hop out" of a car simultaneously and then triangulate and frisk the surrounded person for no apparent reason. Federal public defenders recounted hearing similar experiences from their clients, including Black and Latino people.

<sup>126</sup> S.F. Police Comm'n, Body Worn Cameras Policy (2016), [https://sfpolicecommission.org/sites/default/files/2016-05/PoliceCommission\\_PolicyCommissioner0116-RevisedDraftBWPOLICY052716.pdf](https://sfpolicecommission.org/sites/default/files/2016-05/PoliceCommission_PolicyCommissioner0116-RevisedDraftBWPOLICY052716.pdf).

<sup>127</sup> Lamb, Police Commission Approves Body Cameras, *supra* note 56.

<sup>128</sup> Julia Carrie Wong, *Lyrical Bust: Rap Video Turns Into Crime Scene When Cops Allegedly Stop and Frisk Musician*, S.F. Weekly (Mar. 25, 2015), <http://www.sfwEEKLY.com/san-francisco/san-francisco-sucks/the-city-guia-carrie-wong-jay-z-lotto-content?oid=3495278>.

Other anecdotal examples include the following.

- A college-bound, Black Mission High School student reported having been stopped by an SFPD officer—who went through his pockets—for no apparent reason. When he asked why he had been stopped, he was told to “be respectful” by the officer in a way he perceived as threatening. A Black, male Thurgood Marshall High School student also reported being stopped for no reason by an SFPD officer who went through his pockets and confiscated his cell phone.
- In 2015, Samuel Sinyangwe, a data scientist and policy expert on the Campaign Zero planning team, described his experiences living in the Tenderloin neighborhood: “You routinely see people getting stopped by police and frisked in some instances for just standing on the sidewalk.” He further stated, “[w]hen you see these practices happening, it targets people who are low-income, Black, and homeless.”<sup>129</sup> Former Chief Suhr, however, stated Tenderloin officers are mostly responding to neighborhood residents’ complaints, and officers do not intentionally target low-income people of color.
- In 2015, the SFPD detained and searched 20 Black men during filming for a rap video at a Bayview playground. Footage was captured of the incident. Officer Albie Esparza, stated the searches were justified and “not a stop and frisk,” because police spotted a Black male wearing a black hoodie with a loaded gun walking into the crowd and needed to search everyone else for officer safety. On the other hand, Public Defender Adachi stated there was no excuse for “a wholesale search,” noting officers need a “specific, articulable reason” to search any individual.<sup>130</sup>

A lack of data makes it impossible to conclusively confirm or refute these witnesses’ allegations regarding SFPD’s alleged use of stop-and-frisk tactics. Data are not consistently collected, compiled, or analyzed regarding stop-and-frisk incidents to permit a statistical analysis regarding the prevalence of such practices. As discussed above, hard copy 849(b) forms are to be completed when a person is stopped or detained, but this information is not electronically maintained and the forms do not include demographic information. Officers may complete FI cards after questioning someone, but information from these cards is not consistently entered.

Mayor Lee considered and ultimately abandoned implementing a policy allowing stop-and-frisk detentions in San Francisco. Former Chief Suhr reportedly provided a “tepid” response regarding the proposal, and stated he thought “all the detentions in San Francisco should be based on reasonable suspicion.”<sup>131</sup> Many San Francisco residents expressed disapproval of the proposal, noting concerns about racial profiling.<sup>132</sup> For example, the Black Young Democrats of San Francisco rallied against it, and a majority of San Francisco Supervisors passed a resolution opposing the idea.<sup>133</sup>

<sup>129</sup> Vivian Ho, *SFPD Has Head Start on Activists’ Race Reforms*, SFGate (Aug. 30, 2015), <http://www.sfgate.com/news/article/SFPD-has-head-start-on-activists-race-reforms-6477891.php>.

<sup>130</sup> Wong, *Lyrical Bust: Rap Video Turns Into Crime Scene When Cops Allegedly Stop and Frisk Musician*, *supra* note 128; Henry K. Lee, *Suit Says S.F. Police Harassed Men in Raid During Rap Video Shoot*, SFGate (May 14, 2015), <http://www.sfgate.com/crime/article/Lawsuit-filed-over-raid-of-rap-video-by-San-6262504.php>.

<sup>131</sup> Demian Bulwa & Vivian Ho, *Few Back Stop-and-Frisk Idea in Violent S.F. Area*, SFGate (June 30, 2014), <http://www.sfgate.com/crime/article/Few-back-stop-and-frisk-idea-in-violent-S-F-area-2871588.php>; see also John Coté & Heather Knight, *Stop-and-Frisk Policy Might Cut Violence, Ed Lee Says*, SFGate (June 27, 2012), <http://www.sfgate.com/bayarea/article/Stop-and-frisk-policy-might-cut-violence-Ed-Lee-3G68653.php> (noting former Chief Suhr stated once the Mayor “hears the downside of this and how it was not well received in New York or Philadelphia or by law enforcement in general, he’ll see that’s not the best way to do business here”).

<sup>132</sup> Bulwa & Ho, *Few Back Stop-and-Frisk Idea in Violent S.F. Area*, *supra* note 131.

<sup>133</sup> Fenit Nirappil, *San Francisco Mayor Ends Stop-Frisk Consideration*, Associated Press (Aug. 7, 2012), <http://abcnews.go.com/2012/08/07/san-francisco-Mayor-ends-stop-frisk-consideration>.

## Recommendations

### **1. The SFPD should engage in community policing and community outreach.**

San Francisco community leaders, current and former SFPD officers, and public defenders all recommended consistent community policing. Community policing was also recommended in the SF NAACP Three-Point Plan, which provided that to counteract the public's perception of bias, SFPD should (1) engage in more foot patrols (as opposed to vehicle patrols), especially in minority neighborhoods; (2) interact more with communities in non-crisis situations; and (3) incentivize officers to form relationships with leaders and members of the communities they police.<sup>134</sup>

For example, one community leader observed that SFPD presence in the Fillmore/Western Addition area was mainly via vehicle patrol and that foot patrols are now rare. He recalled a time when police officers would interact with the community at events and suggested that this non-crisis interaction is key to improving relations between the community and SFPD. On the other hand, one SFPD officer from the Tenderloin station stated that officers do interact with community members, including playing basketball with children in the communities they patrol.

SFPD recently created a Bureau of Professional Standards and Principled Policing to focus on community-oriented policing.<sup>135</sup> The new bureau is intended to implement the upcoming recommendations of the DOJ's Office of Community Oriented Policing Services, which launched a collaborative review of the SFPD in February 2016. The bureau was to have been led by Interim Chief Chaplin under former Chief Suhr—as of this report's print date, Interim Chief Chaplin had named Deputy Chief Garret Tom to direct the bureau. Prioritizing the leadership and development of this bureau would be a positive step toward building community trust.

A current SFPD officer stated that "the department is being forced to pretend to at least put policies in place" because of national media coverage on policing, but other officers he speaks to do not want the change to occur. Given this possibility, the SFPD should follow a former Police Commissioner's recommendation to measure community-policing efforts. Whereas much of policing is measured in coercive encounters (i.e., stops, searches, and arrests), SFPD could do more to document community partnerships, attendance at community meetings, street fairs, community-based organizations' events, etc.

### **2. The SFPD should improve initial and follow-up training on implicit bias, procedural justice, and racial profiling.**

The SFPD should ensure that it follows through on its plans to provide department-wide training on implicit bias, procedural justice, and racial profiling, including (1) requiring all Police Academy recruits to participate in implicit bias training; (2) providing all SFPD officers and staff implicit bias and procedural justice training every other year, and online training in the off years; and (3) continuing racial profiling training for SFPD officers.

This training should be conducted in a classroom for the first few years, with online training incorporated later on in the training process. A former high-level SFPD officer stated "canned" training videos on bias may not have been enough, and officers would benefit from live training using more realistic scenarios. A former chief of police of another city witnessed an implicit bias training in St. Louis that included both the police and the community, and he observed substantial progress even from one session. He further stated that framing training from a customer service perspective—as dealing with individual customers rather than a large faceless entity of "the community"—can teach respect, follow-up, and going the extra mile for customer service. In his city, courtesy complaints dropped by 40 percent when the police department shifted to a customer service model and a guardian model.

<sup>134</sup> The Police Athletic League and Police Cadet Corps were cited by witnesses as exemplar programs.

<sup>135</sup> Michael Barba, *New SFPD Bureau to Focus on Community-Oriented Policing*, S.F. Examiner (Feb. 22, 2016), [www.sfgate.com/news/article/New-SFPD-bureau-focuses-on-community-oriented-policing-11911111.php](http://www.sfgate.com/news/article/New-SFPD-bureau-focuses-on-community-oriented-policing-11911111.php).

**3. The SFPD should incorporate procedural justice language into its department general orders and department bulletins.**

The SFPD should incorporate procedural justice language into its department general orders, such as DGOs 5.03 (Investigative Detentions), 5.17 (Policy Prohibiting Biased Policing), and 2.01 (General Rules of Conduct). The DGOs should *require* officers to explain why an individual has been detained or searched and provide in writing the officer's name, contact information, and the complaint/commendation process (such as providing a business card with this information). DGO 5.17 states that officers "should" explain the reason for the detention but it does not require officers to do so, and DGO 2.01 only requires officers to provide their name, star number, and assignment "when requested." Furthermore, the SFPD should issue a department bulletin that sets forth the legal standards for a detention, search, and consensual encounter and requires officers to state the reason for their stop and/or search. The President's Task Force on 21st Century Policing emphasizes that procedural justice is essential to strengthening police-community relations.

**4. The SFPD should issue a department bulletin addressing searches of transgender individuals.**

The SFPD should partner with community-based organizations and coalitions focused on transgender people to issue a department bulletin addressing the procedure officers should follow if they need to conduct a search of a transgender individual. This issue is not addressed in DB 13-258 regarding police interactions with transgender individuals, which only provides that officers are prohibited from searching any person "if the sole purpose of the search would be to determine a detainee's or arrestee's gender." SFPD should revise DB 13-258 to establish a written procedure for searching transgender individuals.

**5. The SFPD should update its current data collection policy to clearly define when data collection is required.**

Given officer confusion over the language of DB 14-059, the SFPD should issue a revised department bulletin that clearly states the SFPD's data collection requirements. DB 14-059 instructs officers to fill out E585 forms "after any vehicle stops related to . . . [m]oving violations, *including bicycles and pedestrians*," (emphasis added) and officers have stated they are unsure whether to collect E585 data for bicycle or pedestrian stops given the reference to "vehicle stops." The SFPD should revise the language of its current data collection policy to clearly specify that data collection is required for any stops related to moving violations, including stops of vehicles, bicycles, and pedestrians.

**6. The SFPD's policies implementing the recent data collection ordinance should clearly define when data collection is required.**

The recently passed data collection ordinance requires data collection for all "detentions" (interactions in which an officer detains an individual) and "traffic stops" (interactions in which an officer stops an individual driving a vehicle), in which the officer initiates activity based on the officer's own observations or the observations and direction of another officer. Given officer confusion over the requirements of the SFPD's current data collection program, SFPD's policies implementing the new data collection requirements should clearly state when data collection is required, such as defining what it means to "detain" an individual.

**7. The SFPD should implement a system to monitor and facilitate officer and supervisor compliance with its data collection policy.**

Given the historical lack of officer compliance with its data collection policy, the SFPD should implement a consistent system to monitor and facilitate officer compliance. Dr. Fridell flagged this issue in her 2007 report, but, as recently as 2014, a sergeant supervising a specialized unit stated that he was unable to

access the E585 entries made by the officers he supervised and thus could not determine whether the officers were complying with the department's data collection program.<sup>136</sup> Supervisors should be able to compare the E585 entries of their subordinates with the number of traffic stops made to monitor compliance, and should regularly report on compliance rates if needed. Supervisors should also be held accountable if the officers they supervise fail to maintain a sufficient level of compliance with the department's data collection policy.

Former Chief Suhr stated the department is moving toward e-citations and planned to have a pilot program in place in late 2016. According to Director Merritt, the SFPD currently has a pilot program for a smartphone app that allows officers to enter citations on their department-issued smartphones, and requires them to enter race and ethnicity information when entering citations. A separate E585 form is also available on the smartphones. The SFPD should merge the citation and E585 forms so that officers cannot issue a citation without entering the required E585 data.

The SFPD should also be regularly audited to ensure that officers comply with the department's new requirements under the recently passed data collection ordinance. In particular, the SFPD needs a system to monitor compliance with data collection on "detentions," which are not limited to traffic stops. This may involve requiring quarterly reports on the number of OCC complaints alleging failure to collect data. The ordinance already requires quarterly reports on the number of OCC complaints alleging bias based on race or ethnicity, gender, or gender identity. Given that not all encounters result in a citation or arrest, smartphone apps can only go so far in ensuring compliance.

## **8. The SFPD should make its stop data publicly available on a monthly basis.**

In February 2016, the SFPD started to post its annual E585 data on its website, providing increased transparency and allowing interested parties to analyze the data for themselves. But to provide a more up-to-date picture of SFPD stops, searches, and arrests, the SFPD should post monthly E585 data. The SFPD should also continue to make its data publicly available when it implements the requirements of the new data collection ordinance.

## **9. The city should engage outside researchers or consultants to analyze stop data.**

San Francisco should engage outside researchers or consultants to analyze SFPD stop data. Given the difficulty of drawing conclusions about biased policing from stop data without an appropriate "benchmark," other cities have turned to researchers and consultants with experience in this type of analysis. The SFPD's BWC footage could be used to supplement this analysis, as Dr. Eberhardt's team is doing for Oakland. Although the new data collection ordinance requires the SFPD to analyze and report its data on a quarterly basis, it does not require in-depth analysis using benchmarks. The city should therefore obtain an independent analysis of the data on an annual basis to get a more accurate picture of whether there is evidence of bias in its stops and searches.

## **10. The SFPD should internally audit and regularly review its stop data for internal benchmarking.**

The SFPD should also use its stop data to evaluate individual officers and units within the same police district for potential outliers in terms of racial disparities in their stop, search, and arrest figures. If individual officers or units are identified as engaging in potentially biased policing, the department could then address the issue in a targeted manner, such as retraining those officers or units on implicit bias and racial profiling.

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<sup>136</sup> See OCC 2014 Annual Report, supra note 104.

**11. The SFPD should require demographic information on 849(b) forms, analyze the data from 849(b) forms and field interview cards, and issue a certificate of detention to anyone detained and released in accordance with 849(c).**

The SFPD should modify its 849(b) form to require demographic information, such as race, as Former Chief Suhr stated. The 849(b) form should also include a certificate of detention issued to all detainees briefly explaining that, pursuant to California Penal Code Section 849(c), the stop is not deemed an arrest, but a detention only. The department should also implement its plans to launch pilot programs to allow officers to enter 849(b) information and complete FI cards on a smartphone app, and the city should provide necessary funding to do so. The demographic information from 849(b) forms and FI cards should be analyzed by the department and/or outside researchers or consultants.

**12. The body-worn camera policy should prevent officer review of footage following any reportable use-of-force incident.**

The BWC policy allows officer review in cases of officer-involved shootings after the officer provides an initial statement. These statements are not mandated before officer review of other reportable use-of-force incidents. Some witnesses opined that whether an officer should be allowed to review BWC footage should not depend on the type of force exerted (e.g., whether the officer used a club rather than a gun). One witness cited a recent incident in which two Alameda County sheriff's deputies severely beat a man with batons in the Mission district of San Francisco, and noted that those deputies would be allowed to review the BWC footage under the SFPD's BWC policy because that situation would not fall within the exceptions to officer review. In Florida, footage of a 2014 arrest in which sheriff's deputies beat an arrestee was captured by both a BWC and a nearby surveillance camera. The BWC was intentionally angled to obscure the officers involved, who repeatedly yelled "stop resisting" while beating the victim. The surveillance camera footage, however, revealed that the arrestee had already surrendered (lying face down with his arms and legs spread) before the deputies began beating him.<sup>137</sup> Under the SFPD's BWC policy, the deputies would be allowed to review the BWC footage before giving a statement. It is inconsistent to regulate officer review in cases of officer-involved shootings but allow officer review in other reportable use-of-force incidents.

The SF Public Defender's Office suggested the Police Commission should consider an additional carve-out prohibiting officer review for all reportable use-of-force incidents. Any additional carve-out would still be subject to the Chief's discretion to permit officer review. A number of police departments that have implemented BWC policies do not permit officer review of BWC footage in any use-of-force incident (e.g., the New York Police Department), and some do not permit officer review in any circumstance.

**13. The SFPD should establish specific criteria for the release of body-worn camera footage to the public.**

The BWC policy provides that the department will accept and process PRA requests for BWC footage. Body cameras can increase transparency, and the SFPD should also consider releasing footage—particularly following controversial events—to increase public confidence through improved transparency. Former Oakland Police Chief Whent was enthusiastic about the benefits of Oakland's BWC policy. Whent explained that the Oakland Police Department has released footage to the public following controversial events. Whent felt that the ability to release footage and thereby participate in the public discourse after an incident was beneficial, and in some cases this transparency shifted public opinion in favor of the police department. Ultimately, as with Oakland's policy, the SFPD's release of body camera footage will be discretionary and the transparency benefits will therefore be dependent on the SFPD's approach to footage release.

<sup>137</sup> Jay Stanley, *A Video That Every Potential Juror Should See*, ACLU (Mar. 11, 2016), <https://www.aclu.org/blog/immigration/every-potential-juror-should-see>.

**14. The SFPD should use body-worn camera recordings for internal and external accountability purposes.**

The SFPD should use its BWC recordings as part of officer and Police Academy training to identify both negative and positive police-citizen encounters and monitor the effectiveness of police training. For example, Oakland Police Department has partnered with researchers at Stanford University to build automated tools to comb through BWC audio to isolate police-citizen encounters that either went particularly poorly or well. The goal is to quickly identify problems and real world examples of great police work. The Stanford team is researching ways BWC data can be used to track and inform the effectiveness of training in the field, using the camera data to see whether the classroom experience translated effectively to encounters on the street.

As the SFPD rolls out its BWCs, it should evaluate how BWC footage might be useful in its training programs, particularly in de-escalation training. Former Chief Whent of the Oakland Police noted that BWCs have provided good evidence in internal affairs and criminal investigations, because the police department now has video footage of almost every complaint that comes into the department. The SFPD could take this one step further, and analyze BWC footage to get a comprehensive view of how officers are implementing their training and identify candidates for remedial training. The SFPD policy mentions the use of footage to review police procedures and tactics, although it does not contemplate how this would work in practice.<sup>138</sup> The SFPD should therefore develop a process by which it will incorporate the review and use of BWC footage in its training programs.

The BWC policy should also clearly state that footage should be used in Internal Affairs Division investigations and OCC investigations.

**15. The SFPD should collect data regarding body-worn camera usage to monitor compliance and should establish a clear policy that body-worn camera violations may be grounds for discipline.**

The SFPD should consider collecting data regarding BWC usage, such as the number of recordings, to monitor compliance. The Oakland Police Department monitors compliance with its BWC policy in its monthly risk management meetings and reviews the number of recordings per officer to identify outliers. OPD also monitors compliance in regard to citizen complaints and use-of-force investigations. The BWC policy does not include penalties for non-compliance. The department must hold officers and supervisors accountable for ensuring compliance with the policy.

**16. After the body-worn camera policy is implemented, it should be actively reviewed every six months and revised if necessary.**

The Police Commission should actively review the BWC policy every six months and revise it if necessary. Several members of the BWC policy working group agreed that the policy should be reviewed every six months and revised if needed based on its effectiveness in practice. This also would allow for the policy to move forward with changes in technology.

**17. The body-worn camera training materials should provide more specificity regarding usage.**

The BWC policy does not provide specific instructions or define what constitutes a "department-approved mounting position" for BWCs. BWC training materials should include more details regarding basic BWC usage, such as where the camera should be placed on the body. Other police departments provide greater levels of specificity regarding usage. The Oakland Police Department, for instance, requires officers to

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<sup>138</sup> S.F. Police Comm'n, Body Worn Cameras Policy, *supra* note 126.

mount cameras on the front of their uniforms. SFPD should similarly specify where officers are required to mount cameras when it implements its BWC policy.

**18. The SFPD should develop and implement a training program for body-worn camera use.**

The SFPD should develop an implementation plan to ensure consistent and effective use of BWCs, given that the draft BWC policy does not indicate how training will be conducted. For example, BWC training should include the use of dummy training cameras. OPD uses dummy training cameras so that officers can get accustomed to the process of using the cameras and learn how to activate them. The dummy training cameras allow officers to practice mounting and activating BWCs in a low-stress environment.

**19. The SFPD should eliminate any unlawful stop-and-frisk practices and should collect the data necessary to determine whether such practices are occurring in violation of SFPD policy.**

As noted above, stop-and-frisk practices have been widely linked to racial profiling. If people are stopped and not arrested or issued a citation, officers should be required to make a record of it, and the data should be electronically recorded and made publicly available. In addition, officers should have to provide a receipt to civilians at the end of stops. This receipt should state the officer's name and badge number, the time and place of the encounter, and the reason for the encounter. Receipts will ensure a record of the event and facilitate any civilian complaints regarding the encounter. For example, in New York, new rules require officers to provide receipts after stops and frisks that would be provided to anyone stopped but not arrested, and officers must check off the reason the person was stopped. Officers are also directed to have "reasonable suspicion" before frisking someone. This proposal is intended to provide documentation of all stops and make the responsibilities of officers more explicit.



# Chapter 2:

## Personnel

### Background

This chapter details the SFPD's recruitment, hiring, and promotion processes and evaluates the policies and practices in which bias has the most potential to play a role. The Panel found that the SFPD Chief retains broad discretion over who the SFPD hires and who is promoted, and while more promotions are now going to officers of color and women than historically, racial and gender diversity at the SFPD has been stagnant over the past three years. This chapter also describes how nepotism and favoritism are a concern. These problems should be addressed by greater transparency and by recommitting the department to increasing its diversity.

### Recruiting

The SFPD employs a variety of techniques to attract new applicants. It recruits candidates both informally and formally and uses a multi-faceted campaign administered by its Recruitment Unit. As part of that effort, the Recruitment Unit has implemented an outdoor advertisement campaign and advertises career opportunities on local public radio and television.

The Recruitment Unit also participates in a large number of events throughout the San Francisco Bay Area and the state of California, including street fairs, career seminars, and other community events. The SFPD attended 227 recruitment or community events between January 2015 and December 2015. The Recruitment Unit keeps tally of the events attended throughout the year and the demographic group(s) at which the events were targeted. For example, in April 2015 the SFPD attended the Cherry Blossom Festival and the SFPD's records note this effort was geared toward Asians and Pacific Islanders. The demographic groups targeted from January 2015 and December 2015 were military and veterans at 43 events, women at 19 events, Blacks at 22 events, Hispanics and Latinos at 17 events, Asians/Filipinos/Pacific Islander at 10 events, and seven events geared toward diversity in general.

In addition to these formal recruiting tactics, SFPD officers carry small cards with the department's website address and instructions for how to apply to be a police officer. Officers hand these out to people who they believe will make good police officers. The department also has a referral bonus program, where sworn officers who refer a new candidate to the SFPD receive a referral bonus of \$500 if the candidate successfully completes the Police Academy and another \$500 if the candidate successfully completes field training. To qualify for the bonus, the sworn officer must verify that he or she has made at least three contacts with the candidate prior to the candidate's start date at the Police Academy.

The SFPD works year-round to increase public awareness of the job opportunities at the SFPD and now accepts applications at any time via web submission. This is a significant departure from past practices, where the SFPD accepted applications only during a two-week window each year. The former practice gave

so-called "legacy" applicants—applicants with a parent or other close relative already in the department—an advantage in hiring because they would be in a position to know when the department was accepting applications. This new practice helps place non-legacy applicants on an equal playing field and the percentage of non-legacy officers has reportedly risen in recent years.

In addition to traditional recruiting tactics, the SFPD offers programs geared toward youth engagement, for both the purposes of recruitment and to promote education. These programs include the following.

- **Cadet Academy:** In March 2015, Mayor Lee announced the revival of the SFPD Cadet Academy, allowing Bay Area youth between the ages of 18 and 21 who are enrolled in accredited colleges or universities to obtain paid positions with the SFPD. The students perform various civilian law enforcement duties under the direct supervision of sworn SFPD staff. In addition to completing a minimum of 12 units of coursework each semester at their respective schools, cadets commit to working 20 hours per week with the police force. At the age of 21, a cadet may then attend the Police Academy to become a sworn officer. Although the program is open to all, Mayor Lee has emphasized that the program will target youth from "San Francisco's highest-risk neighborhoods." Applicants in the program are required to undergo a background investigation process, including a polygraph evaluation and medical and psychological examinations. Candidates compete for 30 to 40 Cadet Academy spots each year.
- **PAL Law Enforcement Cadet Program:** Separate from the Cadet Academy, the Police Activities League (PAL) runs a program intended to provide youth between the ages of 14 and 20 with insight into law enforcement and public service careers. The program is open to students enrolled in high school or college who pass an SFPD criminal history background check. Selected applicants attend the Summer Cadet Academy, which provides four weeks of intensive law enforcement training at the SFPD Academy. Those who successfully complete the summer program are then awarded year-round internships at SFPD stations.
- **Future Graduates Program:** The San Francisco Police Foundation, a nonprofit that is independent of the SFPD, offers a technology-driven, eight-week, paid, summer internship for students between the ages of 14 and 18 who are committed to graduating high school. Each student is placed with a participating employer—a list that includes the SFPD, other government agencies, and certain private employers—and is expected to work 20 hours per week under the supervision of that participating employer. In 2015, 41 students participated in this program.

## Hiring Process

There are 10 basic steps to admission to the Police Academy.<sup>139</sup> The first three steps consist of separate written, physical, and oral exams that are given by the San Francisco Department of Human Resources (DHR). Applicants who successfully complete these three exams are then placed on the list of eligible applicants. The SFPD may then select an applicant from that list—at its discretion—and put the applicant through a further vetting process that involves a personal history evaluation, background investigation, polygraph examination, controlled substance test, psychological examination, and medical examination. These steps are administered by the SFPD. If a candidate successfully completes these steps, he or she may be selected by the screening or hiring committee and the Chief of Police to participate in the Police Academy. After the Academy, the final stage requires successful completion of a 17-week field training officer program. These steps are described in more detail below.

The hiring process begins when an applicant submits an application online or in person with the City

<sup>139</sup> The process is different for lateral candidates, defined as candidates that possess a current Peace Officer Standards and Training ("POST") certificate and have two years of patrol experience. To become SFPD officers, lateral candidates must take and pass the FrontLine National written examination, a work sample test battery, and an oral interview. Lateral candidates must also undergo a background investigation, which includes investigation of previous law enforcement positions held. If hired, lateral candidates may be placed in abbreviated Police Academy and Field Training Officer (FTO) training programs.

and County of San Francisco. After submitting the application, the applicant must schedule and take the FrontLine National law enforcement written examination, a two-and-a-half hour, three-part examination. This exam is administered year-round by the National Testing Network. The examination schedule is set according to a yearly exam plan created by the DHR's Exam Unit in consultation with the SFPD based on the SFPD's anticipated hiring needs and its master hiring plan. The written examination consists of three parts: a video-based human relations test, a reading ability test, and a written language ability test.

Applicants who successfully pass the written examination are asked to submit to a physical ability test and, if they pass that test, to participate in an oral interview. Both of these exams are, like the written examination, pass/fail. The oral interview aims to assess interpersonal skills, problem solving, oral communication skills, and abilities not tested by other examination components. Two to three people from the department conduct the oral interview. The interviewers include at least one civilian and a sworn SFPD officer, usually a sergeant or another seasoned officer. The civilian interviewer is a graduate of the Community Police Academy<sup>140</sup> or is recommended by one of the SFPD's district captains and is there to ensure consistency between the interviews. The California Commission on Peace Officer Standards and Training (POST) provides the questions, and the pass/fail guidelines are set by the SFPD. The department does not give consideration to matching the minority status, or lack thereof, of the interviewers and any specific applicant, as any given interviewer team may conduct many interviews each day, but one interviewee indicated that thought is given to ensuring that the pool of interviewers is diverse and representative of the community at large.

If the candidate passes the written examination, physical ability test, and oral interview, he or she is placed in the pool of viable candidates who are considered "eligible" to become police officers. The SFPD has the option to hire any candidate from that pool.

If and when the SFPD selects an applicant, the department then puts the applicant through multiple examinations and evaluations. First is the personal history questionnaire, which is an online, multiple-choice questionnaire that asks for detailed information about the candidate's family and personal relationships, locations lived, and work history. This document forms the basis for further investigation of the candidate and it identifies those candidates who appear most likely to pass the full background investigation.

Candidates who successfully complete the written examination, physical ability test, oral interview, and personal history questionnaire are referred to the SFPD's Background Investigation Unit. The Background Investigation Unit is headed by a lieutenant and is tasked with investigating the background of all applicants after the applicant submits a completed background packet. The packet uses POST forms and is reviewed by the officer in charge and a case assignment officer. Based on that review and the other aspects of the application process, the candidate may, or may not, be assigned to a background investigator—again, at the department's discretion. One interviewee indicated that a candidate must be assigned to an investigator to advance in the process, but because of the sheer volume of applicants who make it to this stage, not all candidates who are eligible to advance are assigned to an investigator.

Background investigators conduct an extensive assessment of each candidate's history. The total number of background investigators fluctuates depending on the department's yearly hiring projections, but one interviewee estimated there were 30 background investigators in 2013. All of the background investigators are current officers who are assigned to modified duty, or retired SFPD officers who are permitted to work on a part-time basis and still retain their retired status, meaning they remain eligible to receive retirement benefits. One interviewee estimated that 75 percent of the background investigators are retired SFPD officers. Background investigators are selected by SFPD officials. Any sergeant or lieutenant may recommend a current or retired officer for the role. That recommendation is approved by a captain and then a deputy chief. The selected investigators then attend POST Background Investigation School.

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<sup>140</sup> The Community Police Academy is a 10-week program designed to develop awareness of policing and given to members of the community selected through an application process.

Background investigators work based on the department's hiring needs; one interviewee indicated they do not have a set schedule. While their caseload depends on where the department is in the hiring process, each investigator handles approximately six cases at a time. The sergeant and lieutenant who oversee the Background Investigation Unit allocate the cases among the background investigators. If a background investigator has a prior relationship with one of the candidates he or she is tasked with investigating, the investigator is expected to disclose this conflict. One interviewee believed such disclosure was mandated by the general guidelines that required background investigators to proceed in a fair and equitable manner, but other interviewees stated that it was simply a "best practice" and that background investigators rarely made such disclosures—either because they did not follow the practice or because there were a minimal number of conflicts.

In conducting investigations, background investigators collect the candidate's driving and judicial records and contact the candidate's friends, family, past employers, and neighbors. The investigator also conducts a credit check. Background investigators focus on recency and frequency of questionable activities, as well as any activity of a criminal nature. The standards the background investigators employ are provided by POST. The SFPD's website states that past felony convictions will result in automatic disqualification and indicates the types of misdemeanor violations that will result in disqualification. Lateral candidates undergo a similar background investigation process, including previous law enforcement experience.

At the end of their investigations, background investigators recommend whether to "non-select," "pass over," or "accept" the candidate. A candidate who is "non-selected" is not disqualified—he or she merely had something in his or her file that renders him or her ineligible at that point in time (for example, a poor work history). The "non-selected" candidate may consider entering the background investigation process again, at a later date. A candidate who is "passed over" does not meet the POST guidelines. Like "non-selection," "passed over" candidates may be eligible at a later time. The background investigator provides his or her recommendation to the sergeant and lieutenant in the Background Investigation Unit.

The candidate will then submit to a controlled substance test. The SFPD's website states, "Any use of controlled substances after the date of application may be cause for rejection; rejection is mandatory for illegal use. Rejection for prior use of controlled substance(s) is based on the type of substance(s) used and the frequency and recency of such usage. All information submitted by candidates regarding the use of controlled substances will be reviewed during the polygraph examination." Thus, while the department tolerates some past drug use, those specific standards are not publicized.

During the background investigation, the candidate completes a polygraph test, which presumably tests the accuracy of information given by the candidate during the investigation process. If the applicant successfully passes the polygraph, he or she proceeds to the next phase of the hiring process and is required to submit to medical and psychological examinations. The psychological examination is a one-on-one meeting with a clinical psychologist who determines the candidate's suitability as an SFPD officer.

A screening committee reviews the files of candidates who successfully passed the 10 steps during what is called a "hiring meeting." The committee's composition varies, but usual participants include sworn members in Staff Services ranked sergeant or higher. During the meeting, each of the employees who reviewed a candidate or a candidate's file (e.g., the psychologist(s), medical professional, and background investigator) presents to the screening committee perspectives on that candidate.

As a result of the hiring meetings, the screening committee presents a list of applicants who meet the SFPD's standards for the Police Academy and for becoming a sworn officer to the Deputy Chief of Administration and then the Chief of Police. Each year, the city requisitions a specific number of Police Academy spots based on its budget. With that number in mind, the Chief reviews the screening committee's list and decides whether or not an applicant is admitted to the Police Academy. The Chief can pick any applicant on the list and the criteria the Chief uses is not publicized.

## Promotions

Promotions for the ranks of lieutenant, sergeant, and captain are made through a testing and selection process administered at various stages by the SFPD and the DHR. However, the ultimate decision as to which candidates receive a promotion is, within certain parameters, vested solely in the Chief of Police.

The examination process to qualify for promotion is driven by the expiration of eligibility lists compiled based on the results of prior promotional exams administered by DHR. If and when a list for a particular rank is set to expire, DHR reaches out to the SFPD to determine whether (1) a new exam should be administered or (2) the current list should be extended (which may happen if the Chief and DHR determine that a particular list still has a healthy pool of candidates). As a part of this dialogue, DHR and the SFPD will jointly conduct a jobs analysis, where they consider changes in the scope of duties for a particular rank; the minimum qualifications candidates must possess; and the knowledge, skills, and abilities required for success in the position. Once the jobs analysis is completed, DHR may make an exam announcement, which is disseminated via online posting and departmental bulletin.

Given the absence of rules determining how often exams for a particular rank must occur, the frequency with which exams are held varies. For the rank of sergeant, the most recent promotive examination was given in the summer of 2012, and before that, the summer of 2009. For the rank of lieutenant, the most recent exam was given in the summer of 2011, and before that, the summer of 2008. Finally, for the rank of captain, the most recent exam was given in the summer of 2015; before that, the next most recent exam was given in the summer of 2010.

The promotion exam itself consists of oral and written components that test competencies specific to the rank for which the exam is being given. Interviewees were not aware of any classes or other support offered to candidates interested in sitting for promotional exams. One interviewee indicated that the absence of classes or other support to help candidates prepare for promotional exams may adversely impact groups if the standardized tests contain inherent racial or other biases.

Once exam results are finalized, DHR creates a promotion list ranking candidates in terms of their performance on the exam. On the list, each score obtained represents a rank; two or more candidates who achieve the same score on the exam are considered to occupy the same rank. As a part of the jobs analysis conducted before the exam, DHR and the SFPD will also settle on a selection rule, which, along with the number of vacancies that must be filled, determines the size of the pool from which the Chief may select candidates for promotion. Interviewees noted that recent exams have followed the "rule of 10" scores, meaning that when one vacancy is sought to be filled, the 10 highest scores on the list will be eligible for a promotion. However, when more than one position is to be filled, the number of scores that will be considered eligible will be the number of vacancies plus nine. Thus, for example, if the SFPD had to fill five vacancies using the rule of 10 scores, the Chief may select any candidates from the top 14 scores to fill those five vacancies.

Promotions are made when it is determined there is an operational need for vacancies in a given rank to be filled. Once such positions are approved, the SFPD requests DHR to refer a list of names for the promotion recruitment process. The SFPD canvasses people on the list of referred candidates to determine if any are interested in being considered for promotion.

Once a candidate has expressed interest in being considered, the Deputy Chief for Administration holds a promotive meeting to consider the applicant's secondary criteria form. The form enables the Deputy Chief and Chief to consider various factors separate from a candidate's score on the promotion exam—the form will contain information on the candidate's previous assignments, commendations, education, and other experiences and abilities. No rules require the consideration of secondary criteria during the promotions process. Once the Deputy Chief has considered all eligible candidates, he or she will recommend a list of candidates to the Chief for review and selection, who may also consider each candidate's secondary criteria. Despite the discretion to consider secondary criteria, however, many interviewees indicated their understanding that the former Chief simply went "down the list," meaning that promotions were largely

made in rank order without regard to secondary criteria. This rank-order practice may adversely impact groups who are qualified but do not test well, as it does not take in account other potentially relevant attributes that should be represented among higher ranking officers. On the other hand, several current officers raised concerns about the discretionary authority of the Chief to select officers for promotion at the expense of those who had scored higher on the qualifying exam, stating that it further entrenched the perception that there is a culture of favoritism and an informal "good old boys" club.<sup>141</sup>

The role of a candidate's disciplinary history in the promotions process is unclear. Under the memorandum of understanding (MOU), the collective bargaining agreement between the City and County of San Francisco and the Police Officers' Association, the Chief is authorized to consider certain types of disciplinary history within given time limits. Performance-related documents in a candidate's personnel file indicating past discipline greater than a reprimand may be considered for up to five years for promotional decisions; anything lower may only be considered for up to two years. Interviewees were unable to point to any structured processes to ensure that SFPD administration considered a candidate's prior discipline when determining whether to give that candidate a promotion.

### **Statistics on Hiring, Promotion, and Retirement**

In May 2016, the SFPD finally produced data on the demographics of officers who were hired, promoted, terminated, or retired between 2011 and 2015—data that had been requested in December 2015. The data, along with a publicly available Excel dataset<sup>142</sup> that describes the demographic contours of the department as of February 11, 2016, helps inform several of the findings below.

The Panel's Public Records Act request sought demographic data relating to Academy applications, enrollment, and graduation; field training passage; promotion; termination; and retirement. The SFPD only produced data on the latter four topics; it did not produce any Academy-related data.

## **Findings**

### **1. The SFPD prioritizes recruitment outreach to young people and aims to provide them with a positive experience of the department.**

The SFPD works to engage Bay Area youth and raise interest in becoming an officer. Anecdotal evidence indicates that its programs are successful. One interviewee, describing one of the SFPD's intern programs, recalled that through the program approximately 80 interns were invited to meet SFPD officers, watch them work, and learn more about what they do. Before participating in the program, the interns were asked whether they wanted to become officers and what their interactions with officers were like. The responses were overwhelmingly negative. After participating in the program—and learning about the pay and pension—the interns overwhelmingly responded positively to the prospect of becoming officers. These programs may foster diversity in the department ranks.

### **2. The Chief of Police, as the appointing authority, makes the final decision about who will be invited to attend the Police Academy.**

As described above, the Hiring Committee provides the Deputy Chief of Administration with the final list of applicants who meet the standards for the Police Academy. The Deputy Chief, in turn, takes that list to the Chief of Police, and the Chief makes the final determination about who is invited to the Police Academy. Interviewees repeatedly stated that the Chief makes this decision without assistance from others and does not disclose what, if any, criteria he uses. This decision process is therefore largely a mystery and opens the door to accusations of nepotism or favoritism.

<sup>141</sup> See Chapter 7: Culture for more detail about this perception.

<sup>142</sup> SFPD Sworn Demographic Data, <https://sfpd.ca1.mysafesite.net/demograph/>.

### **3. The SFPD's Background Investigation Unit conducts extensive investigations, but its operations are fairly opaque and inefficient.**

Background investigators play an important role in the hiring process and in determining whether a candidate is eligible for hire. The background investigation is rigorous and the passage rate is very low. One interviewee estimated that 20 to 25 percent of candidates successfully pass the background investigation phase.

Despite this important role, the criteria background investigators use to determine whether to accept a candidate are not fully understood. The unit is largely a "black box" with respect to how background investigators are selected, how the investigator makes his or her decision, and whether an investigator who has a relationship with the candidate being investigated will disclose that conflict of interest.

In some ways, this secrecy may make sense—the SFPD wants to protect against applicants somehow gaming the system or manipulating this important step, and it does not want background investigators to be interrupted in their quest for insight into an applicant's past. Nevertheless, this lack of transparency may be undermining the department by creating an area ripe for abuse and favoritism.

Further, there is little transparency in the selection of background investigators. Almost all are, or have been, SFPD officers. Most interviewees believed the Chief gave these roles out as rewards to retired officers with whom he was close. Retired officers have the option to work for the department for up to 960 hours per fiscal year and still maintain their retired status. One interviewee relayed that the background investigation job is considered a "perk" in retirement.

There is also concern that retired officers do not make the best background investigators. These former police officers may have outdated attitudes and a racial makeup that is unrepresentative of the police force today. In the absence of clear guidelines designed to ensure unbiased hiring, unconscious in-group bias may lead retired officers to perpetuate the department's culture by selecting officers like themselves, rather than selecting candidates who make good officers for the current climate.

Further, because they have retired status, these background investigators set their own schedules and work a limited amount of hours, regardless of how many applications are sitting on their desks. In interviews with the Panel, witnesses expressed that the background investigation created some inefficiency in the hiring process, with applicants sometimes waiting a very long time for their background investigations to be completed. There is concern that strong applicants get frustrated and leave San Francisco for another city.

The background investigation process is fairly mysterious, with many people applying for the role and being rejected without being told why. One interviewee stated that there was recently an Academy class where a large proportion of the class was related to people already in the department. The interviewee opined that it creates suspicion when—after the pass/fail tests are administered and the screening committee constructs its list of Academy-eligible candidates—the top third of the list is made up of individuals related to people already employed by the department.

Before commencing their investigations, it is considered "good practice" for background investigators with a relationship to the individual whom they are investigating to disclose the relationship or recuse themselves, but such disclosure does not seem to be mandated by policy. In interviews with the Panel, sources provided differing accounts of whether background investigators routinely disclose relationships: one interviewee said that such relationships were disclosed and two interviewees said they were not.

**4. While the SFPD has an explicit policy against nepotism and favoritism, and the department has instituted some practices to guard against nepotism, more can be done to curb actual or perceived nepotism in hiring.**

Section 201.3 of the department's General Provisions makes clear that nepotism or favoritism is prohibited in all aspects of employment at the SFPD. However, the media has reported on recent instances of nepotism and favoritism in the SFPD's hiring and training process, and witnesses indicated that nepotism remains a problem within the department.

In November 2015, the *San Francisco Examiner* published a leaked department memorandum drafted by Sergeant Matt Rodgers and addressed to field training office staff.<sup>143</sup> The memorandum suggests the existence of nepotism or favoritism and acknowledges the correlating frustration among rank-and-file field training officers.

The memorandum came after various news outlets reported that Jake Lawson, a family friend of former Chief Suhr, received special treatment and was allowed to remain in the department despite being recommended for release by a field training officer. In early 2015, Lawson was sent to the department's Bayview Station to start his field training. He was unable to complete the program successfully, and in the end, he failed the program entirely. Breaking with protocol, Lawson was eventually transferred to another station to go through field training again. That transfer order was signed by former Chief Suhr. Lawson failed his first Police Academy class as well as his field training—in both cases, he was given second chances that others were not afforded.

Sergeant Rodgers' memorandum did not mention any particular instance of nepotism or favoritism, nor did it mention Lawson by name. But it did state that "a recruit was reassigned to another station and assigned to another FTO [field training office]. While this is not unprecedented, it is outside of the normal procedures set forth by the Field Training Program." Another excerpt from the memorandum, included below, emphasizes how decisions to circumvent traditional hiring and training protocol undermine department morale.

In the last day, I have heard a considerable amount of frustration expressed regarding this decision; the consensus being that this decision undermines us as FTO's. Additionally, that it must be predicated on either a lack of trust, or is a blatant disregard of the knowledge, skills, and abilities we possess in doing so. While we can surmise the ultimate reason behind said decision, we as FTO's must understand that we have no say in such matters. Our function is to teach recruits, document their understanding and aptitude for this job, and recommend, based on our observation of said aptitude, whether or not they should be retained as police officers. The decision to accept or reject any given recommendation regarding *every single recruit* within our program is simply not within our scope. I know that such an explanation does not make this decision any easier to accept, but it is unfortunately, the only one that exists.

That being said, I have also heard considerable discussion regarding why, we as FTO's, must continue to train and evaluate if our recommendation, as subject matter experts in Field Training, will not be heard. I understand this frustration as well, and do not begrudge any of you whom may wish to cease your participation in the Field Training Program as a result. That is your decision to make, and is one which may weigh heavy upon you. I fully support anyone who ultimately decides to resign.

Witnesses suggested that this instance of perceived favoritism was not an isolated incidence, but symptomatic of a larger culture of nepotism within the SFPD. As one interviewee explained, the SFPD is a "family business." Similarly, another interviewee described the SFPD "as an East Coast department on the West Coast" because employees went to high school with one another, and their families are frequently related to one another or have some sort of personal relationship.

The SFPD recently adopted policies that make it easier for non-legacy applicants to apply to the department. As discussed, there is no longer a small, two-week application window that potential recruits have to know about. This practice favored families who were already connected to the department. Now, the SFPD accepts applications all year, administers the hiring test monthly, and has a "living" waitlist.

<sup>143</sup> Jonah Owen Lamb, *Leaked SFPD Memo Indicates Practice of Special Treatment Is Widespread*, *S.F. Examiner* (Nov. 27, 2015), <http://www.sfxaminer.com/leaked-sfpd-memo-indicates-practice-of-special-treatment-is-widespread/>.

According to former Chief Greg Suhr, the percentage of non-legacy officers has risen. Other interviewees indicated the practice of favoring legacy hires may be changing—one interviewee even estimated that 75 percent of candidates who were children of SFPD officers were disqualified through the hiring process. Nevertheless, there is room for improvement, and given the evidence of past nepotism in SFPD hiring, more will need to be done to eradicate the perception that nepotism remains an issue.

**5. The absence of rules governing the selection of promotional candidates and the discretion held by the Chief, along with the lack of programs offering support to those seeking promotions, raises the likelihood of bias or favoritism in promotion decisions.**

The promotions process at the SFPD was identified by one interviewee as the personnel procedure in most need of reform at the department. A number of witnesses concurred that several aspects of the process are in need of improvement.

First, interviewees expressed concerns related to the initial stages of the promotions process. The relatively long life of some eligible lists may be cause for concern. One interviewee noted that for the eligible list created from the 2010 captain's exam, almost all candidates on that list received a promotion to the rank of captain before the 2015 exam was given. Considering that applicants who take the exam are rarely, if ever, left off the eligible list entirely, this means almost every candidate who sat for the captain's exam in 2010 received a promotion to captain. Interviewees had further concerns regarding certain minimum qualifications that may be out of step with industry standards. For example, the 2015 captain's promotional announcement required candidates to have served in the rank of lieutenant for at least three years to be eligible for a promotion. However, interviewees noted that because of shortages of well-qualified candidates, industry standards recommend requiring candidates serve only one year in the rank of lieutenant before becoming eligible for promotion to captain.

Second, the ultimate selection of candidates for promotion is a highly discretionary process which increases the risk of bias and favoritism in the promotions process. When coupled with the fact that secondary criteria—which often signal important life experiences and competencies—are sometimes not considered, this discretion has the potential to pass over candidates who are uniquely qualified to navigate the difficult and contentious relationship that sometimes exists between law enforcement and the public.

Third, the lack of any structured processes by which the decision-maker considers disciplinary history is troubling and not consistent with standard law enforcement practices. Consideration of a promotional candidate's disciplinary history, within the parameters set out by the MOU, should be a primary consideration, along with the examination results and secondary criteria, in assessing a candidate's fitness for promotion. While interviewees were not able to provide a clear understanding of whether, how, and to what extent disciplinary history is considered by the Chief, the lack of written policies and procedures on this topic allows for the possibility that candidates who have been disciplined for bias-related conduct will advance through the promotions process unimpeded and ultimately occupy positions of power within the SFPD. Such a result undermines accountability and belies the goal of reflecting a commitment to diversity and equality in the organization's management.

Finally, the lack of programs offering support to candidates preparing for the promotional exams may serve to adversely impact otherwise qualified candidates who face unique barriers to scoring well on standardized tests. Such programs, which may exist in many forms including mentorship or classes, provide the opportunity to level the playing field for candidates with diverse backgrounds and life experiences. One possible solution is for officer affinity groups—such as Officers for Justice—to get resources to mentor applicants.

## **6. Available data indicate that racial and gender diversity at the SFPD has been stagnant over the past three years, during a time when the department greatly increased its hiring.**

As of February 2016, the SFPD is 51.7 percent White, 22.3 percent Asian, 15.7 percent Hispanic, 9.0 percent Black, and 1.3 percent other. It is 84.8 percent male and 15.2 percent female.<sup>144</sup> Former Chief Suhr stated that it was a goal of his to "force the door open" for minority applicants and get a more diverse set of recruits. Data produced by the SFPD indicate that the SFPD did not become more diverse under Suhr's watch when the SFPD began hiring again in 2013 (after it did not add a meaningful number of officers in 2011 and 2012).<sup>145</sup> If anything, the SFPD is slightly more White, and slightly more male than it was three years ago.

During the period 2013-2015, a higher percentage of those who passed field training were White than the percentage of Whites in the department as a whole. On average, 61.5 percent of officers who passed field training during this period were White. Taking terminations and retirements into account, 19 of the 32 officers (59.4 percent) that the SFPD net added over this time period were White. The trend toward adding more White officers is corroborated by SFPD age cohort data. Whites currently make up 55 percent of all officers under the age of 35 in the department. Younger officers tend to have joined the department more recently (although not all recent hires are young). The SFPD's recent hiring has thus slightly increased the concentration of White officers.

The trend for gender is even more pronounced. The SFPD is 84.8 percent male. During the period 2013-2015, 87.4 percent of those who completed field training were male. Accounting for terminations and retirements, the SFPD added net 36 men over this same timeframe and lost a net of four women.

## **7. The percentage of officers of color receiving promotions is rising, and an outsized percentage of women are being promoted.**

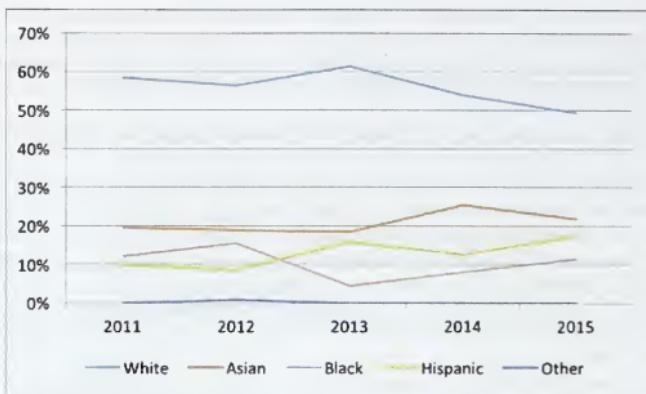
White officers received 56 percent of all promotions between 2011 and 2015, but there was a distinct downward trend in the percentage of promotions awarded to White officers. During this same period, there are noticeable increases in the percentages of promotions awarded to Asian and Hispanic officers, while the percentage of promotions awarded to Black officers showed no discernable trend.

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<sup>144</sup> For context, according to a July 2014 estimate by the US Census Bureau, the population of San Francisco is 41.2 percent White, 34.9 percent Asian, 15.3 percent Hispanic, 5.8 percent Black, and 2.8 percent Other. U.S. Census Bureau, QuickFacts San Francisco, California, <http://www.census.gov/quickfacts/table/PST015214/066700006076>.

<sup>145</sup> Because of budget constraints, a total of only 29 officers passed field training during 2011-2012, a period of time during which the SFPD faced a net outflow of 184 officers. The department began hiring in greater numbers in 2013-2015, adding an average of 125 officers per year, making this timeframe the most appropriate period for comparison.

### Promotions by Race



The percentage of women receiving promotions is higher than their percentage of the department as a whole. Women, who represent 15.2 percent of the department, received 20.0 percent of the promotions in the department between 2011 and 2015.

## Recommendations

To combat existing, perceived, and potential bias in the SFPD's hiring and promotions process, the SFPD should make changes in three main areas: (1) further familiarizing young people in the community with the SFPD and its hiring requirements, (2) increasing transparency in the Background Investigation Unit, and (3) instituting policies and procedures designed to curb actual or perceived favoritism in the SFPD's hiring and promotions processes.

### **1. The SFPD should rededicate itself to recruiting and hiring more officers of color, especially from San Francisco.**

Many witnesses stated emphatically that the SFPD was becoming a more diverse department. The SFPD's own data paints a different story. Cognizant of this data, the SFPD should rededicate itself to recruiting and hiring from communities of color.

More officers of color—ideally from the communities where they patrol—are also needed to help address actual or perceived bias in SFPD stops, searches, and arrests. The San Francisco NAACP Three-Point Plan recommends aggressive recruiting of Black personnel. The department's Not On My Watch campaign is a move in the right direction, and efforts to recruit and hire more officers of color should continue.

### **2. The SFPD should continue and expand its efforts to build relationships with young people in the community.**

The SFPD has made headway by creating cadet and intern programs aimed at building relationships with young people in the city. It should retain and extend these programs, possibly in conjunction or partnership with elementary and high schools throughout the Bay Area. The SFPD should also regularly evaluate these programs to assess whether they are building trust and to see if participants apply to the department and become an officer.

**3. The SFPD should increase transparency in the selection of background investigators.**

Interviewees noted that, in their experience, the background investigation job was often handed out as a retirement perk to the Chief's friends. Whether or not this perception is accurate, it nonetheless appears to be widespread, and it has a negative impact on the department's reputation. The SFPD should work to combat that perception by hiring more background investigators from outside the SFPD, hiring non-officer investigators, and/or publishing the qualifications and requirements necessary to become a background investigator. Furthermore, while the SFPD should establish criteria for the hiring of background investigators, the actual hiring of such personnel should be conducted by the Department of Human Resources.

**4. The SFPD should mandate regular implicit-bias training for background investigators.**

Many interviewees commented on the secrecy that surrounds the Background Investigation Unit, and the simultaneous importance of this unit. Regular training on subjects like implicit bias will help ensure that background investigators understand—and work to counteract—any biases.

**5. Background investigators should sign a standardized form stating that there is no prior relationship with the applicant for each assigned case.**

Instituting a formal practice requiring background investigators to disclose relationships will guard against actual and perceived favoritism. Further, requiring these written statements ensures there is a written record if the investigator is ever challenged, which is essential to instituting accountability. Compliance with this policy should be audited.

**6. The SFPD should institute a high-level hiring committee to sign off on the Chief of Police's final hiring decisions, including deviations from the standard hiring and training process.**

Favoritism—real and perceived—will be curbed if the SFPD institutes a more democratic process for determining who should be offered a position in the Police Academy. The SFPD should institute a committee of three people—including the Police Chief, one civilian employee, and a community member—to review the screening committee's list of eligible candidates and make the final decision for each candidate on a consensus basis. Similarly, there would be less public and interdepartmental discord if decisions to depart from the standard hiring and training processes were made by consensus.

**7. The Police Commission should create and implement transparent hiring and promotions processes and criteria, including a requirement that every candidate's disciplinary history and secondary criteria be considered.**

While providing discretion to the decision maker may serve a useful purpose in any organizational structure, establishing transparent and clearly defined criteria and procedures—including requiring the consideration of every candidate's disciplinary history and secondary criteria—will better protect against potential discrimination or other biases during the hiring and promotions process and help ensure that the SFPD's management ranks both embody and further the department's commitment to diversity and inclusion.

# Chapter 3: Use of Force and Officer-Involved Shootings

## Background

This chapter evaluates the SFPD's policies and practices in officer-involved shootings and other uses of force and identifies areas for improvement to ensure that the SFPD polices in a fair and unbiased manner.<sup>146</sup> The Panel found that the SFPD's use-of-force policy is out of date and should be revised. The SFPD also should improve its use-of-force data collection efforts—so that it and the public can assess whether force is used in a biased manner—and its process for investigating officer-involved shootings.

Uses of force by police officers, and in particular officer-involved shootings, have sparked calls for reform both nationally and locally. In 2014, President Obama established the President's Task Force on 21<sup>st</sup> Century Policing in response to "recent events that have exposed rifts in the relationships between local police and the communities they protect and serve."<sup>147</sup> Those events included the officer-involved shooting and death of Michael Brown in Ferguson, Missouri, on August 9, 2014, and the July 17, 2014, death of Eric Garner in Staten Island after a New York Police Department officer applied a chokehold to him.

Likewise, San Francisco has been struggling to address "rifts" between the SFPD and the communities it serves with regard to uses of force. The SFPD has been heavily scrutinized for the officer-involved shootings that killed Alejandro "Alex" Nieto on March 21, 2014; Amilcar Perez-Lopez on February 26, 2015; Mario Woods on December 2, 2015; Luis Gongora on April 8, 2016; and Jessica Williams on May 19, 2016. The public reaction, both nationally and locally, to each of these incidents emphasized the urgent need for all police departments, and the SFPD in particular, to evaluate the issues of use of force and officer-involved shootings. To fail to do so would risk losing the public's trust in the SFPD's ability to protect and serve its community. As the American Civil Liberties Union of Northern California wrote early this year to United States Attorney General Loretta Lynch, these deaths brought to the surface a number of "festering problems" all culminating in a "crisis of confidence" in the SFPD.<sup>148</sup>

<sup>146</sup> The Panel was not tasked with investigating any particular incident. This report makes no findings or recommendations regarding specific police officers or subjects of use of force.

<sup>147</sup> Office of the Press Sec'y, White House, Executive Order – Establishment of the President's Task Force on 21st Century Policing (2014), <https://www.whitehouse.gov/the-press-office/2014/02/18/executive-order-establishment-presidents-task-force-21st-century-policing>; Office of the Press Sec'y, White House, President Obama Announces Task Force on 21st Century Policing (2014), <https://www.whitehouse.gov/the-press-office/2014/02/18/president-obama-announces-task-force-21st-century-policing> ("In light of the recent events in Ferguson, Staten Island, Cleveland, and around the country, the Administration announced new steps to strengthen the relationships between local police and the communities they are supposed to protect and serve."); see also Sean Smoot, Presentation at Southern Illinois University School of Law: President's Task Force on 21st Century Policing (Apr. 28, 2015), <http://www.siu.edu/law/reviews/2015/04/28/Smoot.pdf>.

<sup>148</sup> Jeremy Lybarger, *ACLU Calls for Federal Investigation into SFPD's Pattern of Civil Rights Violations*, S.F. Weekly (Jan. 29, 2016), <http://www.sfweekly.com/thesnitch/2016/01/29/aclu-calls-for-federal-investigation-into-sfpds-pattern-of-civil-rights-violations>.

Incidents like the Nieto, Woods, Perez-Lopez, and Gongora shootings have prompted strong community responses, including protests and calls for outside review of the SFPD and its use-of-force policy, which has not been updated in more than 20 years.<sup>149</sup> The city's response to these high-profile incidents was criticized by many as tone-deaf and insensitive to community perceptions surrounding police use of force. For example, the SFPD's immediate declaration that the officers in the Mario Woods and Luis Gongora cases were justified angered many in the community. Further, Public Defender Jeff Adachi described the tension-filled town hall meeting following the Mario Woods shooting as being "poorly run" and failing to sensitively address community concerns. High-profile incidents that are not handled carefully can damage trust with the community and undermine the ability of a department to effectively carry out its duties.

Community response to SFPD policies expressed at public meetings illustrates concerns related to biased policing and the inappropriate use of force.<sup>150</sup> It is increasingly clear that many community leaders perceive the SFPD as biased in its application of force, and that the force used is often excessive or unnecessary.<sup>151</sup> Community leaders feel that improper considerations, such as race, sexual orientation, and homelessness, influence the department's use of force.

San Francisco Supervisor John Avalos proposed a resolution criticizing the SFPD as being biased against people of color in its application of use of force, and for its improper response to the Nieto shooting.<sup>152</sup> Avalos' ultimately unsuccessful resolution cited an SFPD Internal Affairs report noting that 69 percent of all people killed by law enforcement in San Francisco since 1985 were people of color, and 40 percent were Black.<sup>153</sup> In the wake of the Mario Woods shooting, Supervisor Malia Cohen told *Time Magazine* that the shooting demonstrated how powerful institutions in the city viewed and treated disenfranchised communities.<sup>154</sup> Cohen also called for greater transparency and accountability for the SFPD.<sup>155</sup>

In the wake of the shooting death of Mario Woods, San Francisco Mayor Lee urged the Police Commission to take swift action in reforming use-of-force policies and training within the SFPD.<sup>156</sup> More recently, Mayor Lee announced a boost in funding for violence prevention and de-escalation training for the SFPD.<sup>157</sup> Meanwhile, the Justice Department's COPS office also announced that it would conduct a voluntary and collaborative assessment of the SFPD.<sup>158</sup> In response, the SFPD has proposed revisions to its existing DGOs ("Draft Revised Policies") and has invited the Panel to provide feedback on the revisions as

<sup>149</sup> Heather Knight, *Protests of Mario Woods' Killing Test Mayor's Resolve*, S.F. Chronicle (Jan. 22, 2016), <http://www.sfchronicle.com/bayarea/article/Protests-of-Mario-Woods-killing-test-Mayors-6778744.php>; see also Janet O., *Hundreds March in SF to Protest SFPD's Fatal Shooting of Mario Woods*, ABC7News (Jan. 30, 2016), [http://abc7news.com/news/hundreds-march-in-sf-to-protest-sfpds-fatal-shooting-of-mario-woods\\_1180634/](http://abc7news.com/news/hundreds-march-in-sf-to-protest-sfpds-fatal-shooting-of-mario-woods_1180634/); Cornell Barnard, *Frisco Five Calling for New City-Wide Protest Against SFPD Killings*, ABC7News (May 8, 2016), [http://abc7news.com/news/frisco-five-calling-for-city-wide-protest-against-sfpd-killings\\_1180845/](http://abc7news.com/news/frisco-five-calling-for-city-wide-protest-against-sfpd-killings_1180845/) (discussing the recent "Frisco Five" hunger strikers who have come to be the forefront of the protest movement); *Group Holds Protest at SF City Hall Over Police Brutality*, KTVU (May 9, 2016), <http://www.ktvu.com/news/13908772-story>.

<sup>150</sup> See, e.g., *Emotion Runs High at SFPD Town Hall Discussing Mario Woods' Shooting Death*, KTVU (Dec. 4, 2015), <http://www.ktvu.com/news/5589323-story> (showing video of protests at Mario Woods town hall meeting); *Tempers Flare at Community Meeting About SFPD Reforms*, KTVU (Feb. 24, 2016), <http://www.ktvu.com/news/96856036-story> (showing video of public comment at the Department of Justice COPS listening session).

<sup>151</sup> This feeling of biased use of force has been echoed by many members of the community at public hearings of this Panel as well as those of the Department of Justice COPS Collaborative Review Team.

<sup>152</sup> S.F. Bd. of Supervisors Res. No. 30-16, File. No. 160039 (2016), <http://www.sfbos.org/file-uploadedfiles/bdsupvsr/issuances/16-0030-16.pdf>.

<sup>153</sup> *Id.*; see also Bay City News, *Supes Vote Down Police Brutality Resolution*, S.F. Appeal (Dec. 17, 2014), <http://bit.ly/1nqaswv> (2014/12/supes-vote-down-police-brutality-resolution).

<sup>154</sup> Katy Steinmetz, *The Shooting of Mario Woods Brings Ferguson to San Francisco, Activists Say*, Time (Dec. 16, 2015), <http://www.time.com/4151979/mario-woods-shooting-san-francisco/>.

<sup>155</sup> *Id.*

<sup>156</sup> Vivian Ho, *S.F. Mayor Ed Lee Outlines Reforms in Wake of Mario Woods Shooting*, SFGate (Jan. 6, 2016), <http://www.sfgate.com/crime/article/Mayor-Lee-outlines-reform-push-in-wake-of-Mario-6741707.php>.

<sup>157</sup> Emily Green, *Lee Proposes \$17.5 Million Boost to SFPD for Violence Prevention*, SFGate (May 10, 2016), <http://www.sfgate.com/politics/article/Lee-Proposes-17-5-million-boost-to-SFPD-for-7454057.php>.

<sup>158</sup> Mark Berman, *Justice Department Launches Investigation into San Francisco Police Force*, Wash. Post (Feb. 1, 2016), <http://www.washingtonpost.com/news/post-nation/wp/2016/02/01/justice-department-launches-investigation-into-san-francisco-police-force/>.

part of ongoing meetings with local stakeholders.<sup>159</sup> These revisions have been submitted for review to the San Francisco Police Commission; as of the date of publication of this report, the Commission has voted to adopt a new Use of Force General Order that reflects input and feedback from the Panel.<sup>160</sup> The city is now in negotiations with the POA over the final language and implementation of the order.

Beyond these most recent high-profile officer involved-shooting deaths, many in the community have had a long-standing concern that race, gender, and sexual orientation bias infects the application of the use of force by the SFPD. Lawsuits have been filed regarding the arrests and use of force against people of color that have gained widespread community attention.<sup>161</sup> The ACLU of Northern California summarized community sentiment: “[C]oncerns about the gross racial disparities in arrests of Black people have plagued SFPD for years and have yet to be abated.”<sup>162</sup> Despite promises of reforms from the SFPD, community perceptions of biased policing remain.<sup>163</sup>

The Panel evaluated use of force in four major topic areas: (1) the SFPD’s use-of-force policies, (2) the SFPD’s training practices regarding uses of force, (3) data collection regarding uses of force by the SFPD, and (4) implementation of body-worn cameras.

### Policies Governing Appropriate Use of Force

The relevant DGOs for use of force and officer-involved shootings are DGO 5.01 and 5.02. DGO 5.01, last updated on October 4, 1995, broadly governs when an officer may resort to force, as well as reporting and investigation protocols. DGO 5.02, last updated on March 16, 2011, governs the appropriate uses of firearms. They describe the appropriate types of force that may be used, when uses of force must be reported and by whom, and the standards guiding the use of force, such as DGO 5.01 stating that “officers are permitted to use whatever force is reasonable and necessary to protect others or themselves, but no more.” As DGO 5.01 notes, the policies are “to provide general guidelines under which force may be used.”

In December 2015, seen in part as a response to the shooting death of Mario Woods, the SFPD added a departmental bulletin that amended the DGOs and elevated drawing and pointing a firearm at a person as a reportable act.<sup>164</sup> This DB explicitly states that it “amends DGO 5.01 & 5.02,” and thus appears to be a specific amendment to SFPD’s policies.<sup>165</sup> In contrast, DB 15-106 (adopted April 27, 2015), titled “Avoiding the ‘Lawful but Awful’ Use of Force,” does not appear to be anything more than a reminder by former Chief Suhr to SFPD officers to consider alternatives before implementing uses of force, but also acknowledging that “there are times when using quick, decisive force options are necessary.”<sup>166</sup> Relevant Departmental Bulletins also include DB 15-255 (Dec. 11, 2015), DB 14-014 (January 7, 2014), DB 14-015 (January 7, 2014), DB 14-111 (April 14, 2014), DB 15-051 (March 5, 2015), DB 15-106 (April 27, 2015), DB 15-155 (July 16, 2015), and DB 15-128 (May 26, 2015).<sup>167</sup>

<sup>159</sup> See Stakeholder E-mails, <http://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/PoliceCommission050416-Stakeholdersubmissionsasof050216.pdf> (comments from stakeholders during the revision process, including the Panel); SFPD Department General Order 5.01 (Stakeholder Revisions to Draft Revised Policies), <http://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/PoliceCommission/Su410-UserFeedbackandCEDPolicies-withupdatedstakeholderscomments.pdf> (Panel and other stakeholders’ redline to the most recent Draft policy); see also Use of Force Documents, S.F. Police Dept., <http://sanfranciscopolice.org/use-in-re-documents> (SFPD webpage dedicated to collecting public comment, expert feedback, and the various versions of the Draft Policies).

<sup>160</sup> The version of the Draft Revised Policy approved by the Police Commission on June 22, 2016, is available at <http://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/PoliceCommission062216-ApprovedDGOv1.pdf>.

<sup>161</sup> Alex Emslie, *Lawsuit Alleges SFPD Racial Bias, Excessive Force in April Arrest*, KQED News (Sept. 9, 2015), <http://www.kqed.org/news/2015/09/09/lawsuit-alleges-sfpd-racial-bias-excessive-force-in-april-arrest>.

<sup>162</sup> *Hall v. City & Cnty. of S.F.*, No. 3:15-cv-04092-CRB (N.D. Cal.).

<sup>163</sup> Jaeah Lee & AJ Vicens, *The Racially Charged San Francisco Police Shooting You Don’t Know About But Should*, Mother Jones (Dec. 4, 2015), <http://www.motherjones.com/politics/2015/12/police-shot-and-killed-man-san-francisco-week-here-what-you-should-know>.

<sup>164</sup> S.F. Police Dep’t Bulletin No. 15-255.

<sup>165</sup> See also S.F. Police Dep’t Bulletin No. 15-128, Officer-Involved Shooting and Discharge Investigations, Revision to Definitions in DGO 8.11.

<sup>166</sup> See Introduction at page 17 for the Panel’s recommendations regarding DBs and DGOs.

<sup>167</sup> The bulletins and DGOs are also supplemented by Field Operations Bureau (“FOB”) Orders. The Panel has received one FOB Order, FOB DGO 04-03—Officer Involved Shootings, and has an outstanding request to receive any other FOB orders that deal with use of force. Any other FOB orders dealing with use of force have not yet been produced and do not appear to be publicly available.

## Training on Use of Force

Perhaps even more important than the DGOs are the training programs that the SFPD conducts to teach academy cadets and officers how to implement the guidelines contained in the formal policies. For example, even though DGO 5.01 governs the permissible use of force and identifies permissible techniques for officers to use, an officer would presumably look to the SFPD training materials for guidance on when and how to apply those techniques.

Training on use of force begins with Basic Academy training for cadets at the SFPD Regional Training Center.<sup>168</sup> As a program certified by the California POST, Basic Academy must provide a minimum of 664 hours of instruction on 42 topics.<sup>169</sup> The SFPD Academy's website states that Basic Academy includes courses on physical training and defensive tactics, impact weapons, chemical agents, semi-automatic pistol, shotgun, and extended range impact weapons.<sup>170</sup> As part of the Basic Academy, cadets are introduced to simulations of POST and SFPD-constructed scenarios involving the use of force, ethics, disputes, and domestic violence.<sup>171</sup> In some simulations, cadets are presented with "[f]orce [o]ption" video scenarios and "[s]cenario [d]emonstration sessions."<sup>172</sup>

At the completion of the formal physical training program, cadets must undertake the POST Work Sample Battery examination, which consists of five events "simulating actual physical situations a police officer could encounter on duty."<sup>173</sup> Basic Academy culminates with field training simulation exercises and field tactics courses in which cadets participate in "dry fire" simulation scenarios.<sup>174</sup> After successfully completing Basic Academy, recruit officers will receive an additional 17 weeks of field training under three different field training officers.<sup>175</sup> Thereafter, officers may have access to ongoing professional development training.<sup>176</sup>

Other than the above descriptions from the SFPD Academy's website, however, the Panel received almost no information regarding the content of trainings—including use-of-force training course materials or training videos—despite requests for them.<sup>177</sup> To date, the Panel has received only three documents relating to use-of-force trainings:

- *The San Francisco Law Enforcement Regional Training Center's Basic Course Arrest & Control Manual:* The manual provides instructions on how to implement certain "techniques available to deal with subjects during arrest and detention." However, the manual does not provide guidance on determining when to use any particular technique.
- *The AO/CPT Curriculum for 2010–2015:* The curriculum references courses regarding crisis intervention, racial profiling, cultural competency, and bias-based policing. However, the curriculum provides no detail on the content of the courses or the attendance of the courses.

<sup>168</sup> Basic Academy description, S.F. Police Dep't, <http://sanfranciscopolice.org/basic-academy>.

<sup>169</sup> POST Regular Basic Course, S.F. Police Dep't, <https://post.ca.gov/regular-basic-course.aspx>.

<sup>170</sup> Basic Academy description, S.F. Police Dep't, <http://sanfranciscopolice.org/basic-academy>.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> Field Training Office, S.F. Police Dep't, <http://sanfranciscopolice.org/field-training-office-o>.

<sup>176</sup> Professional Development Unit, S.F. Police Dep't, <http://sanfranciscopolice.org/professional-development-unit>.

<sup>177</sup> See Introduction at page 10 for more on the Panel's Public Records Act ("PRA") request to the SFPD.

- Files including PowerPoint presentations used to train officers and supervisors on how to respond to a scene after an officer-involved shooting, and to demystify the ensuing investigation, psychological ramifications, and media attention. However, these materials provided almost no information on the guidance actually provided to officers on how to deal with a potential use-of-force situation before it escalated to actual use.<sup>178</sup>

Notably, none of the documents provided to the Panel indicates whether the SFPD has any procedures for evaluating the effectiveness of its use-of-force training.

### **Data Collection and Uses of Force**

Data collection regarding how the SFPD engages in uses of force is critical to understanding whether its policies are being followed fairly and properly. DGO 5.01 contains policies regarding how an SFPD officer must report an instance of use of force. Under DGO 5.01, not every action constituting a use of force must be reported. Instead, only the following instances qualify as reportable uses of force.

- Physical control, when the person is injured or claims to be injured
- Liquid chemical agent, when sprayed on or at the person
- Department-issued baton, when the person is struck or jabbed
- When the officer finds it necessary to strike a suspect with his/her fist, a flashlight, or any other object
- Any use of carotid restraint
- Any discharge of firearm

As mentioned above, shortly after the shooting death of Mario Woods, in December 2015, the SFPD issued a DB amending DGO 5.01 to elevate drawing and pointing a firearm at a person (even without discharge) as a reportable instance of use of force.<sup>179</sup> This policy revision is long overdue, as the Ninth Circuit Court has defined the pointing of a gun at someone as a use of force since 2010.<sup>180</sup> The SFPD's previous policy was thus contrary to the law until this current amendment.

When a reportable use of force occurs, DGO 5.01 requires the officer to inform his or her supervisor and prepare (or assist in preparing) an "incident report" that includes the type of force used, the reason for the force, and information about the supervisor. DGO 5.01 does not require that the incident report include demographic information. DGO 5.01 also does not require that information from the incident reports be tracked electronically.<sup>181</sup>

178 The files provided did include a PowerPoint presentation that reviews SFPD use-of-force DGOs and case law on the standard for reasonableness in use-of-force situations. The presentation also makes reference to "The Four Cs": contain, control, communicate and coordinate. The slide states that "[i]f the situation does not require Immediate Action/Rapid Deployment, thinking should shift from apprehension to containment" to be achieved by use of the Four Cs: "Contain—Get cover, establish a perimeter, and keep the suspect therein. Control—Identify the Incident Commander and inform units of mission. Communicate—Establish communication with units on scene ... and notify other resources. Coordinate—Set up a command post, prevent self-deployment, locate units, and identify on-scene capabilities/needs." This information in itself is insufficient to determine how the SFPD instructs its officers when to use force, but does show that the officers in this situation are instructed first to approach the situation with a state of mind seeking apprehension and not containment.

The files provided by the SFPD also included videos and documents entitled "homework." These documents posited hypothetical situations that officers could encounter and were demonstrated by clips that played out the scenario. For example, in one scenario officers are asked to imagine that they have arrived at the scene of a crime where the suspect is still clutching at a gun and is unresponsive. The homework asks the officer what they would do in this situation, and how their actions would change if a police officer were lying down at the scene with a gunshot wound. Unfortunately, none of these assignments provided information as to what the SFPD instructs its officers is correct way to act in any of the posited scenarios. Likewise, there are slides in a PowerPoint presentation with headings that read "Shoot/Don't Shoot?" and an image that appears to be a screenshot of a video clip, but again, no information was actually provided to the Panel as to when the SFPD instructs its officers to use force.

179 See Vivian Ho, *S.F. Police Change Gun Policy in Wake of Mario Woods Shooting*, SFGate (Dec. 16, 2015), <http://www.sfgate.com/news/article/SF-police-change-gun-policy-in-wake-of-Mario-G700907.php>.

180 See *Espinosa v. City & Cnty. of S.F.*, 598 F.3d 528, 537-38 (9th Cir. 2010).

181 The newly approved draft of DGO 5.01 does require electronic data collection; this version of the draft policy must now go through the POA negotiation process.

Starting this year, however, the SFPD must also comply with additional data tracking requirements for certain reportable incidents under Assembly Bill No. 71 (AB 71):

- any incident involving the shooting of a civilian by a peace officer or the shooting of a peace officer by a civilian, or
- any incident in which the use of force by a peace officer against a civilian or the use of force by a civilian against a peace officer results in serious bodily injury or death.

In some respects, AB 71 is narrower than DG 5.01 because it only requires reporting for uses of force that result in a shooting or "serious" bodily injury or death. For those reportable incidents, however, AB 71 requires the SFPD to provide an annual report to the California Department of Justice. Beginning with the first report in 2017, the SFPD's annual reports must include detailed information about the individuals involved and the circumstances of the use of force, including the following.

1. Gender, race, and age of each individual who was shot, injured, or killed
2. Date, time, and location of the incident
3. Whether the civilian was armed, and, if so, the type of weapon
4. Type of force used against the officer, the civilian, or both, including the types of weapons used
5. Number of officers involved in the incident
6. Number of civilians involved in the incident
7. Brief description regarding the circumstances surrounding the incident, which may include the nature of injuries to officers and civilians and perceptions on behavior or mental disorders

In addition to AB 71, the SFPD must also begin compliance this year with new local reporting requirements under San Francisco Ordinance 166-15. Among other things, Ordinance 166-15 requires the SFPD to begin collecting demographic information regarding stops and detentions and contains specific requirements for incidences involving use of force. Beginning June 30, 2016, the SFPD must provide quarterly reports to Board of Supervisors, the Police Commission, and the Human Rights Commission on the following information.

- Total number of uses of force
- Total number of uses of force that resulted in death to the person on whom an officer used force
- Total number of uses of force broken down by race or ethnicity, age, and sex of persons on whom force was used

Thereafter, beginning in June 30, 2017, the SFPD must also provide quarterly reporting on broader statistics regarding stops and detentions.

## **Implementing Body-Worn Cameras**

In the wake of high-profile officer-involved shootings, the use of body-worn cameras by police officers has come to the forefront of the national debate on police use of force.<sup>182</sup> Body-worn cameras are attractive because of their potential to improve transparency into police interactions with the public, and thereby improve accountability.<sup>183</sup> This accountability may lead to a decrease in excessive use of force by police. For example, a 2015 report from San Diego's policy department noted that after the adoption of body-worn

<sup>182</sup> Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All*, ACLU (Mar. 24, 2015), <http://www.aclu.org/police-body-mounted-cameras-right-policies-place-win-all>.

<sup>183</sup> Leadership Conference on Civil and Human Rights & Upturn, Police Body Wear Cameras: A Policy Scorecard (2015), <http://www.humanrights.org/twsscorecard.org>. But see Timothy Williams, James Thomas, Samuel Jacoby, and Damien Cave, *Police Body Cameras: What Do You See?*, N.Y. Times (Apr. 1, 2016), [http://www.nytimes.com/interactive/2016/04/01/us/police-body-cameras.html?utm\\_term=.a07773d6c10f4&utm\\_medium=referral&utm\\_source=top-news&utm\\_campaign=top-news&utm\\_content=top-news&utm\\_term=.a07773d6c10f4](http://www.nytimes.com/interactive/2016/04/01/us/police-body-cameras.html?utm_term=.a07773d6c10f4&utm_medium=referral&utm_source=top-news&utm_campaign=top-news&utm_content=top-news&utm_term=.a07773d6c10f4) (noting that the usefulness of body camera videos is limited by cameras' limits and viewers' biases).

cameras, "complaints about officers fell 40.5 percent and use of 'personal body' force by officers dropped by 46.5 percent."<sup>184</sup> The SFPD does not currently employ body-worn cameras. As discussed below, however, the SFPD is implementing new policies to begin deploying body-worn cameras to a subset of officers.<sup>185</sup>

## Findings

### 1. The SFPD's use-of-force policies are contrary to best practices and should be revised.

The SFPD's current policies governing the use of force and officer-involved shootings are outdated, confusing, and do not reflect best practices for modern police departments. Several key areas can be improved and specific recommendations regarding revisions to the policies are presented below. By clarifying the appropriate uses of force, the SFPD can work to ensure that its policies on use of force will be applied in a more transparent and fairer manner.

In February 2016, following the officer-involved shooting of Mario Woods, the SFPD initiated its own efforts to revise its policies on the use of force by issuing draft revised policies and soliciting input from various stakeholders, including the Panel. At the start of the drafting and revision process, the draft policies consisted of three separate DGOs and a Special Operations Bureau Order on Conducted Energy Devices. Based on comments raised by the stakeholders and the U.S. Department of Justice, the latest drafts consolidate the draft DGOs into the following.

- DGO 5.01: Use of Force
- Special Operations Bureau Order - Conducted Energy Devices<sup>186</sup>

The content of the revised draft DGO 5.01 roughly correlates with and consolidates the current DGOs, covering use of force, use-of-force reporting, and use of lethal force in a single DGO. During the stakeholders' meetings and at subsequent public hearings of the Police Commission, the Panel made several recommendations to the draft revised policies. The Panel's recommendations and those of the other stakeholders were then submitted to the Police Commission for discussion.<sup>187</sup> The Commission discussed the recommendations and sought additional input from the U.S. Department of Justice and from members of the public.<sup>188</sup> Based on this feedback, on June 1, 2016, the Commission released two possible versions of the new DGO 5.01. Based on this feedback, on June 1, 2016, the Commission released two possible versions of the new DGO 5.01 for public comment.<sup>189</sup>

Representatives from the Panel and community stakeholders then collaborated to produce an additional version of DGO 5.01 that better reflected standards of 21st century community policing. After

<sup>184</sup> Williams, Police Body Cameras: What Do You See?, *supra* note 182.

<sup>185</sup> See Chapter 1: Stops, Searches, and Arrests for more detail on the SFPD's body-worn camera policies.

<sup>186</sup> This bureau order on Conducted Energy Devices (CEDs) authorizes the limited deployment of CEDs, commonly referred to as Tasers, to approximately 100 officers; it also specifies the circumstances when officers may deploy CEDs and other regulations regarding their use. The Panel recommended delaying the consideration of this order until it could properly and comprehensively analyze the possible benefits and risks of CED use to develop a final recommendation. Based on studies conducted to date, experts disagree on the potential impact of CED deployment, including the risk of CED-related injuries. Consequently, the Panel suggested the Commission allow itself additional time to fully consider whether and how to deploy CEDs. Given the already expansive scope of the use-of-force revision process, the Panel suggested considering CED deployment separately at some point after the DGO revision process was complete. As a result, the Panel declined to provide specific recommendations on the language of the CED Bureau Order. Based on feedback from the Panel and community stakeholders, the Police Commission decided to consider CEDs at a later date.

<sup>187</sup> Minutes of S.F. Police Comm'n Meeting, S.F. Police Dep't (May 4, 2016), <http://sanfranciscopolice.org/meeting/police-commission-may-4-2016-agenda>.

<sup>188</sup> The preliminary Department of Justice comments on the Revised Policies are available at [http://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/AgendaDocuments/DOL%20Memos%20from%20DOJ.pdf](http://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/Agenda/Documents/DOL%20Memos%20from%20DOJ.pdf) and <http://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/AgendaDocuments/DOJ-Subject-Matter-Experts-Comments-of-Use-of-Force-Policies.pdf>; the notes from the public comment sessions are available under the Community Input Session, found at <http://sanfranciscopolice.org/use-force-documents>.

<sup>189</sup> These versions of the Draft Revised Policies are available at <http://sanfranciscopolice.org/meeting/police-commission-june-1-2016-supporting-documents>.

this version was presented to the Commission, community stakeholders worked with the POA to develop a "consensus" version, which reconciled most of the differences between the competing drafts of DGO 5.01.<sup>190</sup> On June 22, 2016, this "consensus" version was unanimously adopted by the Commission.<sup>191</sup>

Now that it is approved by the Commission, the DGO will enter the statutorily required meet-and-confer process, during which a city negotiator will conduct additional negotiations with the SFPD's designated bargaining unit—the POA.<sup>192</sup> Based on public statements by the POA, the negotiation will focus on areas of disagreement not settled by the adopted consensus version and should not result in substantial changes to areas of agreement.<sup>193</sup> After the meet-and-confer process is complete, a final draft (reflecting changes made by the city negotiator and the POA) will be presented to the Police Commission for either final approval and adoption, rejection and further negotiations, or arbitration with the POA.

## **2. The SFPD did not provide sufficient information to evaluate its use-of-force training.**

The SFPD has not provided the Panel with sufficient information to evaluate whether its current use-of-force training programs sufficiently train officers on the fair and unbiased application of the use of force. As part of its investigation, the Panel submitted public records requests for specific materials regarding use-of-force training materials as noted below.

- All documents from 2010 to 2015 related to any training that police officers receive, including how often police officers are required to attend such training, pertaining to:
  - a.any form of bias;
  - b.community policing, relationship-based policing, interaction with community members, interaction with minority community members, language and cultural competency, community sensitivity, and related issues;
  - c.use of force, de-escalation, and conflict resolution;
  - d.use of firearms;
  - e.interactions with youth and interactions with people with mental health issues; and
  - f.procedural justice.
- All documents from 2010 to 2015 related to any training that police officers receive at the academy, including instruction syllabi, pertaining to the subjects identified above.

The Panel has not received complete responses to any of these requests. The Panel also requested, but has not received, a copy of the academy training manual.<sup>194</sup>

In addition to seeking training materials, the Panel also attempted to interview witnesses who were familiar with the SFPD's training programs on use of force, but was impeded by the POA.<sup>195</sup>

Without access to training materials or knowledgeable witnesses, the Panel is unable to evaluate the SFPD's use-of-force training. For example, former Chief Suhr repeatedly mentioned his commitment though DBs to "time and distance and de-escalation."<sup>196</sup> According to former Chief Suhr, the bulletins make it clear

<sup>190</sup> For more details on the specific language of the draft DGOs and the Panel's role in contributing to the use-of-force revision process, the Panel representatives' written and oral statements before the Commission are available on the San Francisco Police Commission's website at <http://sanfranciscopolice.org/meetings/>.

<sup>191</sup> See Vivian Ho, "New Use-of-Force Policy for Police Gets Panel's OK, SF Police Use-of-Force Policy Gets Commission OK," San Francisco Chronicle (June 23, 2016).

<sup>192</sup> This information is up to date as of the publication date of the report; negotiations are ongoing and details are subject to change.

<sup>193</sup> Representatives of the Panel will continue to advocate for its recommendations as the POA negotiation process progresses.

<sup>194</sup> See Introduction at page 10 for more on the Panel's PRA request to the SFPD.

<sup>195</sup> For more detail, see Introduction at page 7 related to the Panel's interactions with the POA.

<sup>196</sup> See, e.g., Alex Emslie, "Time and Distance" Central to Controversy Over San Francisco's Latest Fatal Police Shooting, KQED News (Apr. 14, 2016), <http://ww2.kqed.org/news/2016/04/14/time-and-distance-central-to-controversy-over-san-franciscos-latest-fatal-police-shooting/>.

to officers that they should not discharge a firearm and maintain a safe distance when a subject is a threat only to themselves. While the relevant department bulletin is public, without the relevant training materials it is impossible to know how this mandate is being implemented and if officers are being consistently trained to comply with this mandate.

### **3. The SFPD does not collect data sufficient to evaluate whether people of color are disproportionately the subject of police use of force.**

Before this year, the SFPD was not required to and did not track demographic information about individuals who are subject to use of force by an officer. Other than any information that may be contained within individual incident reports, the only way that the SFPD tracked instances of use of force was to maintain a paper "log." As discussed below, however, its use-of-force logs contain very little information about the reported incidents and no demographic information. Indeed, the only demographic information received by the Panel during the investigation was from the San Francisco District Attorney's office, whose records of officer-involved shootings indicate that more than half of the subjects of such shootings are people of color.

In particular, the DA provided a spreadsheet with demographic information regarding the subjects of 69 officer-involved shootings reported from January 23, 2010 to July 30, 2015.<sup>197</sup> In total, 58 percent of subjects were reported as people of color (Black, Hispanic, Asian, Filipino, or Pacific Islander), 16 percent of subjects were reported as White, and 26 percent of subjects did not have any reported race or ethnicity. Without additional information, such as the location of where the officer-involved shooting took place, the demographics of those areas as well as the demographics of detentions made in those areas,<sup>198</sup> and other data, it is not possible to conclude whether SFPD officer involved-shooting statistics reflect racial bias in shootings, or to conclude with any reliable certainty that officer-involved shootings disproportionately affect certain groups. Nonetheless, even without complete data, it is apparent that officer-involved shootings impact communities of color:

#### **Officer-Involved Shootings (January 23, 2010–July 30, 2015)**

- Race reported: 51 (74 percent)
  - Black: 20
  - Hispanic: 16
  - White: 11
  - Asian: 2
  - Filipino: 1
  - Pacific Islander: 1
- Race not reported: 18 (26 percent)

In addition to the spreadsheet of officer-involved shootings received from the DA, the Panel also received 970 pages of partial use-of-force logs from the SFPD. The use-of-force logs consist of paper forms with 14 columns. The first four columns call for case identifying information, including date, case number, and the names of the reporting officers and the reviewing officer. The next six columns list various types of force (e.g., physical control, chemical agent, firearm, etc.) to be check-marked if used. The next three columns inquire about whether the officer or suspect was injured during the encounter (or complained of injury), requiring the person reporting the incident to circle "yes" or "no." There is one final column for miscellaneous comments. These logs are submitted bi-monthly, to be reviewed and signed by the Commanding Officer.

<sup>197</sup> The spreadsheet also contained some information regarding prior officer-involved shootings dating back to 1997. For those prior officer-involved shootings, however, the spreadsheet did not contain complete demographic information. For this reason, the prior officer-involved shootings were not included in the analysis.

<sup>198</sup> Some experts disagree with the use of community demographics to evaluate whether uses of force are disproportionately directed at minority populations, and believe the best comparison is against the demographics of individuals who are involved in violent crime. However, in some cases that type of demographic information is not readily available.

Notably, the logs do not call for the reporting officer to report the subject's gender, race, or age. In fact, the logs do not call for the reporting officer to list any information about the subject whatsoever, aside from marking whether the subject was injured or complained of injury. The logs also do not call for the reporting officer to indicate whether the subject was armed, or the number of officers involved in the incident.

In general, the logs are difficult to read, inconsistent, and often incomplete. Although the use-of-force logs received generally covered the years 2013–2015, the Panel received no logs for November–December 2014 or November–December 2015. Moreover, within the logs that the Panel did receive, many pages contained illegible text or text that did not conform to the appropriate format (e.g., case numbers with too many digits). For example, the "date" column was cut off entirely on some pages whereas other pages contained dates that did not exist (e.g., February 30). At some point during 2013, certain columns also disappear (e.g., "strike by fist/object" and the "carotid restraint" appear in earlier forms, but no longer appear as columns in later forms). In approximately half of the entries, the person reporting the incident declined to fill out the comments section. Some of the entries that do include comments reference use-of-force techniques not addressed in the SFPD's DGOs (e.g., "arm bar"). Finally, many of the entries do not identify the officer involved, whereas others identified multiple officers without specifying which officer was responsible for which use of force. This inconsistent incomplete reporting may be indicative of management complacency, and suggests the need for regular, independent audits from the City Services Auditor.

Notwithstanding these constraints in the data, the Panel endeavored to compile a digitized dataset from these paper logs to gain a better overall understanding of current use-of-force practices. Based on data extracted from the logs, the SFPD reported on average 50–70 cases a month involving at least one use-of-force incident. In more than half of those cases, the reporting officer(s) identified at least one suspect as being injured (although a smaller percentage of cases involved the suspect complaining of injury).

#### **Panel Analysis of SFPD Use-of-Force Logs by Case**

	2013	2014 (Jan–Oct)	2015 (Jan–Oct)
Number of unique cases	775	671	503
Number of unique cases with at least one suspect identified as injured	430 (47 unknown)	417 (60 unknown)	293 (51 unknown)
Number of unique cases with at least one suspect complaint of injury	361 (41 unknown)	350 (20 unknown)	244 (8 unknown)

Looking at the data from the perspective of officers, rather than cases, an average of 30–50 officers reported at least one incidence of use of force in any month. Less than half of the officers who reported any use-of-force incident during the course of the year also reported at least one injury.

#### **Panel Analysis of SFPD Use-of-Force Logs by Officer**

	2013	2014 (Jan–Oct)	2015 (Jan–Oct)
Total number of officers involved in at least one reported case	492	383	371
Number of reported instances in which an officer was injured	211	166	98

Among the reported uses of force, the most common was physical control, followed by strike by fist or object and strike or jab of the baton.

#### Panel Analysis of SFPD Use-of-Force Logs by Type of Force

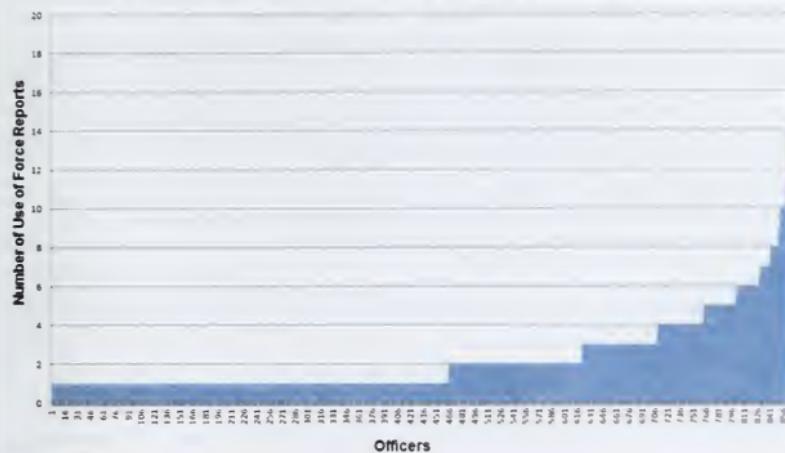
	2013	2014 (Jan–Oct)	2015 (Jan–Oct)
Number of reported uses of physical control	565	485	353
Number of reported uses of strike by fist or object	418	304	180
Number of reported uses of baton strike or jab	181	105	81
Number of reported uses of chemical agent	126	75	67
Number of uses of carotid restraint	46	40	20
Number of uses of firearm	8	11	4
Number of uses categorized as other use of force	7	0	0

As reflected above, the total number of officers involved in at least one reported case in each year was lower than the total number of unique cases reported that year. This holds true even though each reported case may involve multiple officers. In other words, subject to the numerous limitations to the data noted above, the information extracted from the use-of-force logs suggests that some officers must be involved in multiple reported instances of use of force.

Indeed, analyzing across all available data, the Panel finds that a small number of officers accounted for a large number of all reported instances of uses of force.<sup>199</sup> To visualize the distribution, below is a chart ranking the number of incidents for each officer who reported any use-of-force incident during the relevant period. As reflected below, the majority of officers who reported any instances of use of force during these years only reported one or two instances in total. The remaining minority of officers (under 30 percent), however, accounted for a majority of the total reports (60 percent of all reported instances of use of force).

<sup>199</sup> This assessment is not inconsistent with results in other police departments. See, e.g., Police Exec. Research Forum ("PERF"), Critical Issues in Policing Series: Civil Rights Investigations of Local Police: Lessons Learned 16-18 (2013) ("Research has long suggested that a small percent of police officers account for a high percentage of use-of-force incidents. There are a number of possible explanations for this, some of them benign. For example, officers in high-activity assignments may be exposed to considerably more high-risk encounters. However, frequent uses of force may also be an indication that an officer needs additional monitoring, supervision, training, or discipline.") (emphasis added).

### Officers Listed from Fewest to Most Use of Force Reports



As reflected above, only one use of force was reported per officer for more than 450 officers during the entire period of 2013, January–October 2014, and January–October 2015. Of course, the above distribution only tracks officers who reported at least one use-of-force incident during the relevant period and potentially omits large numbers of active officers who reported no use-of-force incidents at all. On the other hand, the distribution also does not reflect any uses of force that were not required to be reported (e.g., uses of force that did not result in any injury or complaint of injury).

Based on this preliminary analysis, it certainly appears that use of force is not employed uniformly by all officers. Without more information about these officers and cases, the Panel cannot draw any conclusions as to why certain officers are applying use of force with much higher frequency than other officers.

#### 4. The SFPD's implementation of a body-worn camera policy is a positive development, but the final adopted policy reduces accountability benefits.<sup>200</sup>

The SFPD is in the midst of preparing for the rollout of body-worn cameras for 1,800 officers, which may increase accountability by providing evidence for use in use-of-force investigations, and has the potential to improve officer training and dramatically decrease the use of force.<sup>201</sup> Former Oakland Police Chief Sean Whent, for example, credits body cameras—in addition to updated training, more restrictive policies, and an effective review process—for the city's 72 percent reduction in use-of-force incidents. The potential accountability benefits of the SFPD's new body-worn camera policy are compromised, however, by a liberal officer review policy, which requires officers to make only a brief initial statement “summariz[ing] the actions that the officer was engaged in, the actions that required the use of force, and the officer's response” before review of the footage. Formal interviews, under the newly adopted policy, would occur after review of the footage with the officer's representative or attorney.

<sup>200</sup> For more on the SFPD's body-worn cameras and policies, please see Chapter 1: Stops, Searches, and Arrests.

<sup>201</sup> Vivian Ho, S.F. Panel Votes on Body Camera Policy, SFGate (Dec. 3, 2015), [www.sfgate.com/bayarea/article/S-F-panel-votes-on-body-camera-policy-12572070.php](http://www.sfgate.com/bayarea/article/S-F-panel-votes-on-body-camera-policy-12572070.php).

## 5. Officer-involved shooting investigations conducted by the District Attorney's Office suffer from a lack of independence and an outdated notification system.

The DA's office conducts its own investigations of officer-involved shootings and in-custody deaths in parallel to the SFPD's internal investigations. The White Collar Crime Division's Special Prosecutions Unit (SPU) in the DA's office is responsible for these investigations and responds to officer-involved shooting scenes alongside the SFPD. Although the SPU's investigations are important to ensuring accountability within the SFPD, they are often limited by (1) lack of prompt notification from the SFPD to correct personnel at SPU, and (2) difficulties the SPU faces in its efforts to conduct a truly independent investigation.

Current procedures obligate the SFPD to notify the DA's office of each officer-involved shooting so that the SPU can respond to the scene. Often, however, the SFPD fails to reach the relevant "on-call" representative, and/or notifications are quite delayed, with 45 minutes to one hour lapsing before the SFPD reaches the correct contact within the DA's office. In one instance, for example, the body of the shooting victim had already been moved by the time that SPU investigators arrived on the scene. However, the SFPD has historically resisted requests to provide earlier notification in order to allow earlier response to officer-involved shooting scenes; the SFPD cites the long list of individuals in SFPD leadership who are contacted first as the cause of the delay.

Second, it is often difficult for the SPU to conduct an investigation that is truly independent from the SFPD's. In any officer-involved shooting, the SFPD is the lead agency and has the power to control the scene. Under current procedures, the SPU attends interviews of officers involved in officer-involved shootings alongside the SFPD. However, in any interview, the SFPD always asks its questions of the officers first. While interview techniques vary from investigator to investigator, the SFPD investigators often ask leading questions that do not advance an objective investigation. These questions may taint the interviews and reduce their utility in the SPU's independent investigation.

In light of these concerns, the DA's office recently developed a draft memorandum of understanding to be negotiated with the SFPD that seeks to improve the independence and utility of the DA's investigations. Under the draft memorandum of understanding, the DA's office would be notified of all officer-involved shootings within 10 minutes of notification to the SFPD's communications department. In addition, the DA's office would be the lead agency on the scene of any officer-involved shooting.<sup>202</sup> Likewise, the DA's office would lead any non-compelled interviews of officers following the officer-involved shooting and decide, in its discretion, whether to invite SFPD investigators to participate in these interviews.<sup>203</sup> Finally, the memorandum of understanding contemplates that the DA's investigations would be conducted by a newly established Criminal Justice Integrity Team of the DA.<sup>204</sup>

If implemented, the memorandum of understanding would help mitigate the problems identified above.

## Recommendations

### 1. The SFPD should regularly update, review, and revise its use-of-force policies.

The SFPD's primary use of force policy, DGO 5.01, was last updated in 1995. Use-of-force best practices for police departments have developed substantially in the past 20 years. The current efforts to revise DGO 5.01 are not only necessary, but long overdue. Policies should be reviewed and revised regularly, at a minimum, and also as specific circumstances dictate. The SFPD must remain vigilant in monitoring its high-risk policies, including policies regarding the use of force, and update them as necessary. Furthermore, the SFPD should take steps to ensure it is documenting its efforts to review and revise its policies whenever

<sup>202</sup> See Appendix I: Draft Memorandum of Understanding Between the San Francisco District Attorney's Office and the San Francisco Police Department Regarding the Investigation of Officer-Involved Shootings, In-Custody Deaths, and Use of Force Incidents 4 (2016 draft).

<sup>203</sup> *Id.* at 5.

<sup>204</sup> *Id.* at 2.

such analyses and revisions take place. Such review could include an audit by an independent agency such as the City Services Auditor.

The policy need not be rewritten each time it is reviewed. But having a regular schedule for review and revision would give the SFPD the opportunity to evaluate the policies and any needed improvements or clarifications, and also give the public more confidence that the policies were regularly being evaluated. The SFPD should also ensure it has appropriate command staff responsible for determining when high-risk policies should be updated in response to important developments. As stated above, the SFPD should cease its practice of amending the DGOs through department bulletins, which is confusing and inefficient.<sup>205</sup> For example, DB 13-067, issued in 2013, purports to amend DGO 5.01 to supplement the types of incidents requiring reporting of a use of force to include instances where a person complains of "pain that persists beyond the use of the physical control hold." That same language appears in the current draft revised policy.<sup>206</sup> DGO 5.01 should have been updated with this language when DB 13-067 was released instead of having the amendment contained in a department bulletin; instead, it is only now being incorporated into the actual policy.

As noted above, at the request of the Police Chief and the Mayor, the San Francisco Police Commission has approved updated use-of-force policies and is in the process of negotiating with the POA ahead of final adoption and implementation. The Panel's working group participated in the stakeholders' meetings, providing feedback at the Police Commission discussion on the topic, and will continue to provide feedback to the Police Commission during this process.

## **2. The SFPD's use-of-force policy should clearly and concisely state guiding principles and expectations.**

Currently, DGO 5.01 is quite long, at 11 pages. The SFPD's revised use-of-force policy should clearly and succinctly state the guiding principles on use of force and its expectations on how use of force will be documented, reported, and investigated. This policy should then be supplemented by more extensive training materials like manuals on specific issues or techniques, and "scenario-based" training.<sup>207</sup>

Having a shorter policy with more extensive training materials has several benefits. First, a short, succinct policy will be clearer and more digestible, and therefore officers may be more likely to abide by it. Second, training manuals can be refreshed and updated with greater ease based on the latest research and field data, while changes to the underlying policies require more time and process development. This ability to adapt to match modern best practices will become critical as advancements in data collection and societal changes alter current trends in law enforcement.

The SFPD could consult the International Association of Chiefs of Police (IACP) as a helpful resource on how to implement a short and succinct policy. The IACP Model Use-of-Force Policy is only three pages long, but is accompanied by a training manual with pictures and video that provides details on topics like baton training, strike zones, etc.

During the use-of-force policies revision process, the Panel recommended wherever possible the consolidation of language and the streamlining of the general orders. The current consolidation of multiple DGOs into a single (albeit longer) DGO 5.01 is a positive step toward a more streamlined policy on use of force. The Panel supports the efforts to clarify the use-of-force policy.

However, as a result of the revisions process, it appears that certain initial "policy" statements from the current DGO 5.01 were removed from the draft revised policy. The "policy" statements in the current DGO 5.01 reflect the SFPD's commitment to use only the "minimal" amount of force that is "reasonable" and "necessary" under the circumstances. The proposed removal of these policy statements from the draft

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<sup>205</sup> See Introduction at page 16 for more on the relationship between DGOs and DBs.

<sup>206</sup> Draft Use-of-Force Policies and Stakeholder Comments, *supra* note 189.

<sup>207</sup> As noted above, the Panel was not able to assess the current training materials of the SFPD.

revised policy has created substantial confusion and concern among stakeholders. In particular, the Panel and other stakeholders are concerned that the draft revised policy could be interpreted to no longer require officers to use the minimal reasonable and necessary force. Therefore, the Panel has and does strongly advocate for the draft revised policy to retain the current guiding principal that officers should only use the “minimal” amount of force “reasonable” and “necessary” under the circumstances.

### **3. The SFPD should limit the circumstances where the carotid restraint is an acceptable use-of-force technique and delineate those circumstances in the written policies.**

DGO 5.01 currently includes the carotid restraint as an acceptable use-of-force technique. This technique is disfavored under modern police philosophy. Properly applying the carotid restraint can be extremely difficult, especially under circumstances where the subject is resisting the officer. Because misapplying the carotid restraint can have a very severe outcome (i.e., severe injury or even death), most police departments have decided to prohibit the use of this technique.

The carotid restraint is a contested area of draft DGO 5.01 that the Commission and the POA are currently negotiating. As approved by the Commission on June 22, 2016, the draft policy removes the carotid restraint as a permissible use-of-force technique. The POA has indicated that it wishes to allow the use of techniques that apply pressure to a subject's trachea or arteries, which would include the carotid restraint, in situations where lethal force would otherwise be justified. The POA also suggested language that lists precautions officers should take when deploying the carotid restraint, and imposes a mandatory medical assessment requirement when it is deployed.

Either change would bring the policy more in line with current best practices regarding the use of force. If the final policy does permit use of the carotid restraint, officers must be appropriately trained and held accountable for misuse.

### **4. The SFPD should eliminate its “escalating scale” of permissible uses of force in its use-of-force policy and include a focus on “de-escalation.”**

DGO 5.01’s “escalating scale”<sup>208</sup> of permissible uses of force is outdated and impractical.<sup>209</sup> An “escalating scale” describes an escalating series of actions that an officer may take to resolve a situation. This continuum has many levels of increasing severity, beginning with verbal persuasion and physical control and ending with the use of a firearm. Officers are instructed not to move up the scale unless the officer is unable to obtain compliance with a lower level of force, or it is determined that a lower level of force would not be adequate.

The “escalating scale” is not the best structure for a use-of-force policy and many departments abandoned escalation scales more than 10 years ago. It is impractical to ask an officer to go through the relatively slow-paced decision-making process that the “escalating scale” requires when faced with exigent circumstances. Use-of-force policy provisions that are impractical undermine the policy’s legitimacy and are likely to contribute to decreased officer compliance overall.

Instead, the policy should present all the permissible techniques, and officers should be instructed to select the most reasonable and least forceful method that would be effective under the circumstances.<sup>210</sup> This would give the officers the flexibility to use their best judgment to respond effectively, rather than deciding what step on a “scale” of options they should be applying. It is possible that the specific techniques are listed elsewhere in training materials that were not provided to the Panel. If that is the case, DGO 5.01 should specifically state where such information is contained, and that DGO 5.01 only applies to the explicitly permitted techniques identified in that source.

<sup>208</sup> Also sometimes called “continuum.”

<sup>209</sup> Draft Revised Policy 5.01 appropriately eliminates the escalating scale.

<sup>210</sup> This is sometimes called the “toolbox,” “wheel,” “circle,” or “grab-bag” method.

DGO 5.01 currently lacks any discussion of “de-escalation.” The SFPD should follow current trends in law enforcement by having a use-of-force policy that advocates for the use of de-escalation techniques, where practical. A policy with a de-escalation focus may eliminate the need for use of force in some instances. For example, former Chief Whent of the Oakland Police cites the Oakland Police Department’s focus on de-escalation in both policy and training as contributing to its significant reduction in uses of force by police.<sup>211</sup>

A significant improvement in Draft Revised Policy 5.01 emphasizes the SFPD’s commitment to using de-escalation principles and describes various de-escalation techniques to be used where practical. Community members repeatedly suggested including de-escalation during the Panel’s investigation. An explicit policy addressing de-escalation would help address the public’s concerns.

The stakeholders disagree, however, on whether the language in the draft policy should require officers to “consider” principles of de-escalation, or to “apply” principles of de-escalation when faced with a dangerous situation. One version of the draft policy, labeled as “version 2” at the June 1, 2016, Police Commission meeting, demonstrates a much stronger commitment to the principles of de-escalation, and uses mandatory language requiring officers to apply these principles. This version is most consistent with the principles expressed in this report and by the other independent stakeholders in the community. In contrast, the alternative “version 1” uses discretionary language throughout and substantially limits the officer’s obligation to apply de-escalation principles. During the use-of-force policies revision process, the Panel has consistently supported removing the escalating scale of options, and continues to support the mandatory language requiring officers to “apply” principles of de-escalation. Ultimately, the “consensus” version adopted by the Commission uses the mandatory “apply” language. The Panel will continue to support the use of the mandatory language as DGO 5.01’s final language is negotiated with the POA.

## **5. The SFPD should articulate all permissible types of chemical agents, impact weapons, and extended-range impact weapons in its use-of-force policy.**

Currently, DGO 5.01 does not list all permissible types of chemical agents, impact weapons, and extended-range impact weapons. All permissible types of chemical agents, impact weapons, and extended-range impact weapons should be articulated in DGO 5.01 to achieve greater policy clarity and public transparency. It may be that the specific types of chemical agents, impact weapons, and extended-range impact weapons are articulated in the training materials; however, they should be identified in the actual policies themselves, which are public documents, if the training materials are not made publicly available.

Moreover, in response to a recommendation in Officer-Involved Shootings: A Five-Year Study by San Francisco Police Department (2010), then-Chief George Gascon directed the SFPD’s Direct Training Division to explore the use of less lethal options currently not available to department members. Whether this directive was effectively implemented, however, is unclear because the DGO 5.01 does not currently list all permissible non-lethal options.

During the use-of-force policies revision process, the Panel recommended the inclusion of all permissible types of force options. The revised policy as adopted, however, includes a non-exclusive list of potential uses of force.

## **6. SFPD supervisors should be required to evaluate the reasonableness of force after all use-of-force incidents.**

A commanding officer and/or member of SFPD management, and not the immediate supervisor of the officer involved in the use-of-force incident, should be required to conduct an evaluation of the reasonableness of force after all use-of-force incidents.<sup>212</sup> Each officer who is involved in a use of force and

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<sup>211</sup> According to one media source, in Oakland, use-of-force complaints have dipped more than 40 percent from 2013-2014 and officer-involved shootings have decreased more than 60 percent from the prior decade’s average. Joaquin Palomino, Sharp Downturn in Use of Force at Oakland Police Department, S.F. Chronicle (Sept. 2, 2015), <https://www.sfgate.com/bayarea/article/Sharp-downturn-in-use-of-force-at-Oakland-Police-6481127.php?fbclid=IwAR27mS8cmPjTmzqyOJw>.

<sup>212</sup> Training Commanding Officers and SFPD Management to evaluate reasonableness should also be implemented as part of this recommendation.

all witness officers should also prepare a statement, and the officer's commanding officer or a member of SFPD management should adjudicate the investigation and make a determination whether the use of force was reasonable. If the commanding officer or member of SFPD management determines that the use-of-force investigation indicates the use of force was unreasonable, it should be referred to Internal Affairs for a mandatory personnel investigation. DGO 5.01 and Draft Revised Policy 5.01 only require supervisorial evaluation when the supervisor was notified of use of force.<sup>213</sup> The purpose of this recommendation is to eliminate any perceived discretion as to what types of excessive force allegations merit supervisorial evaluation. The officer's supervisor should perform the investigation regarding the use of force, such as ensuring "photographs of the subject, including any injuries, are taken and all other evidence is booked."<sup>214</sup> DGO 5.01 and Draft Revised Policy 5.01 only require that photographs be taken of injuries; the Panel recommends photographs be taken even if there are no visible injuries.

Draft Revised Policy 5.01 should be amended to further clarify and emphasize the division of responsibilities between the supervisor investigating the use of force and the commanding officer and/or member of SFPD management who is adjudicating the use of force. The policy should specify that the person adjudicating the use-of-force incident should hold at least the rank of captain. The language is currently unclear and could be interpreted as allowing the same superior officer to both investigate and adjudicate a use-of-force incident, which the Panel considers to be inappropriate.

## **7. The SFPD's use-of-force policy should include a provision emphasizing the SFPD's duty to conduct fair and unbiased policing.**

The Panel consistently recommended that Draft Revised Policy 5.01 include a provision emphasizing the SFPD's duty to conduct fair and unbiased policing. An officer has a duty to conduct his or her job in a fair and unbiased manner, and this duty must be codified in the policy.<sup>215</sup> The consensus version as adopted does include such a provision, and Panel representatives will continue to advocate for this provision as negotiations continue.

## **8. The SFPD should adopt the "guardian" mentality in its use-of-force training.**

SFPD should emphasize a guardian mindset in its training to build community trust and strengthen community engagement. The President's Task Force on 21<sup>st</sup> Century Policing recommends that "[l]aw enforcement culture should embrace a guardian—rather than a warrior—mindset to build trust and legitimacy within agencies and with the public."<sup>216</sup> When a law enforcement agency is viewed as an occupying force, rather than a community protector, it cannot build community trust. A former high-level SFPD officer observed that the SFPD presently has both guardian and warrior officers. One expert described "warrior" officer mindsets as being created from as early as the cadet training, where academies were modeled on "military boot camps" that employed "aggressive and adversarial" methods. This training can contribute to officers "subconsciously" learning that they should exert force with their authority. Also, when cadets are trained in environments where they are constantly being attacked, escalation and the use of force can become the officer's first instinct. In describing the distinction between the guardian and warrior approaches to policing, a member of the President's Task Force wrote:

In 2012, we began asking the question, "Why are we training police officers like soldiers?"

Although police officers wear uniforms and carry weapons, the similarity ends there. The missions and rules of engagement are completely different. The soldier's mission is that of a warrior: to conquer. The rules of engagement are decided before the battle. The police officer's mission is that of a guardian: to protect. The rules of engagement evolve as the

<sup>213</sup> Draft DGO 5.01 uses the terms supervisor, superior officer, and commanding officer, but does not define or specify what is meant by the respective terms.

<sup>214</sup> SFPD Department General Order 5.01.

<sup>215</sup> The Panel has submitted this recommendation to the SFPD through its participation in stakeholder meetings on revising use-of-force policies.

<sup>216</sup> President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 1 (2015), [http://www.cops.usdoj.gov/pdf/taskforce\\_taskforce\\_finalrep01.pdf](http://www.cops.usdoj.gov/pdf/taskforce_taskforce_finalrep01.pdf).

incident unfolds. Soldiers must follow orders. Police officers must make independent decisions. Soldiers come into communities as an outside, occupying force. Guardians are members of the community, protecting from within.”<sup>217</sup>

Rebuilding public confidence through the guardian mindset would not merely improve the SFPD’s legitimacy. Police officers who adopt the guardian mentality are embraced as part of their communities, and members of the public work with guardian officers to make their neighborhoods safer. Making these connections and engaging the community would improve public safety and increase the effectiveness of crime fighting.

Although it is important that the SFPD work to instill a guardian mindset in its training, the President’s Task Force Report notes the significance of department culture in the ultimate success of guardian-centric training policies. “The values and ethics of the agency will guide officers in their decision-making process; they cannot simply rely on rules and policy to act in encounters with the public. Good policing is more than just complying with the law.”<sup>218</sup> Guardian training should therefore be viewed as both practical procedural justice training, and a tool of cultural evolution. Both components are critical to building public confidence and legitimacy.

Indeed, the SFPD has publicly endorsed the guardian mindset in its response to the President’s Task Force Report.<sup>219</sup> In support of the guardian mindset, the SFPD cited to its leadership training “Blue Courage: Heart and Mind of a Guardian,” a program which “inspires officers to embody the noblest of character and unquestioned devotion to the principles that guide the law enforcement profession and develops the guardian mindset through education in the nobility of policing, foundations, respect, and practical wisdom modules.”<sup>220</sup> As noted above, however, the Panel received very little training information and is unable to independently evaluate whether the SFPD incorporates the guardian mindset into its regular training—the Blue Courage training program is not available to all cadets or officers.

In addition, public trust that the SFPD is adopting and implementing a guardian mindset is eroded when highly publicized and troubling incidents of use of force continue to develop, such as the cases of Mario Woods, Alex Nieto, Amilcar Lopez-Perez, Luis Gongora, and Jennifer Williams. Therefore, the SFPD should conduct a comprehensive review of its training programs—from basic training to leadership training—to ensure that it is instilling the guardian mindset in all officers. In particular, as discussed below, the SFPD should expand its proposed de-escalation training and implicit-bias training. In the weeks preceding the release of this report, the SFPD announced a framework for rolling out new training on both subjects. Going forward, the SFPD must embrace the guardian mentality in developing and expanding these trainings. Moreover, the SFPD should ensure that its training procedures be subject to independent auditing efforts.

## **9. The SFPD should expand its training on de-escalation and proportionality.**

The SFPD should implement mandatory de-escalation training. Broadly speaking, de-escalation training encourages officers to slow down, resist contributing to the exigency of an incident, and select the best proportionate response before resorting to force.<sup>221</sup>

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217 *Id.* at 11.

218 Sue Rahr & Stephen K. Rice, Nat’l Inst. of Justice, *From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals* 12 (2015), <http://www.hks.harvard.edu/content/download/16023/170518n/version/1/file/WarriorsGuardians.pdf>.

219 S.F. Police Dep’t, Review and Response of the Final Report of The President’s Task Force on 21st Century Policing (2015), [https://sanfranciscopolice.org/sites/default/files/FileCentres/Drummers\\_2015-SFPD\\_21stCenturyPolicing\\_Final%202015\\_09\\_22.pdf](https://sanfranciscopolice.org/sites/default/files/FileCentres/Drummers_2015-SFPD_21stCenturyPolicing_Final%202015_09_22.pdf).

220 *Id.*

221 On the related issue of crisis intervention, the Police Commission adopted a 2010 resolution that created the Crisis Intervention Team (CIT) Panel, which provides detailed trainings on how an officer should handle different situations, including how they should respond to a scene involving a mentally ill person. Although the SFPD offers incentives for officers to take CIT training, including taking it into account for officer promotions, and recommends a mandatory 40-hour CIT training for all SFPD first responders and field supervisors, Police Commissioner Sonia Melara has commented that less than a third of the Department, or about 380 officers, have actually taken the training. Currently, CIT training has yet to be turned into a DGO and remains voluntary de-escalation in mental health situations. The Panel supports the expansion of CIT training to all officers.

In contrast, the current DGO 5.01 instructing officers provides an "escalating" scale of force, ranking the techniques of force on a scale of least forceful to most forceful. By ranking the techniques in this manner, it appears that officers should move "up" the scale if one technique is not effective. As Police Commissioner Victor Hwang noted in a recent op-ed, the policy "fail[s] to address the larger question of what officers should do" before using force at all.<sup>222</sup> Rather, "the policy calls for escalation, even if the person does not understand English, is under the influence, or in mental health crisis."<sup>223</sup>

While the current policy may not specifically instruct officers to escalate on the scale, it does suggest that when a lower level of force is not effective in achieving compliance, the officer should move "up" the scale and increase the level of force. The SFPD should ensure, either in its policy or training materials, that its officers understand that escalating force may not be appropriate or effective, especially in circumstances where mental health or language barrier issues may be implicated and should consider those issues before simply deciding to increase the level of force used.

As discussed above, the SFPD has taken steps in proposing the Draft Revised Policy 5.01 to replace the "escalating scale" with an alternate "wheel" approach to use of force. In addition, the SFPD and the Police Commission have announced reforms to police training with an emphasis on de-escalation.<sup>224</sup> The policy, while not yet final, "emphasizes the sanctity of human life, de-escalation and proportionate response."<sup>225</sup> Under the new policy, officers are expected to establish a "buffer zone ('reaction gap')" around the suspect to reduce the likelihood that force will be needed.<sup>226</sup> The policy also calls for officers to use verbal skills to engage the suspect, prohibits shooting at vehicles, and bans the chokehold (and vascular neck restraints).<sup>227</sup>

Again, to ensure that the revised policies are properly implemented, the SFPD should implement scenario-based training that emphasizes the sanctity of human life, and what are reasonable situations for an officer to use force against an individual. De-escalation training, if implemented appropriately, gives officers the tools they need to avoid unnecessary use of force, and particularly deadly force.<sup>228</sup> Most officer-involved shootings occur soon after officers arrive on scene and are usually at close range.<sup>229</sup> According to former Chief Suhr and Police Commission President Suzy Loftus, "[b]etter officer training, use of force protocols and equipment particularly in situations involving suspects armed with weapons other than firearms could reduce such shootings by up to 80 percent."<sup>230</sup> Assuming de-escalation does not currently play a substantial role in officer training, enhanced de-escalation training would be an important shift.

The draft revised policies are also an important step toward creating a culture that embraces proportionality.<sup>231</sup> The draft revised policies define proportionality as a principle that an officer's level of force be proportional to the severity of the threat posed to human life or the offense committed. It is crucial that the SFPD follow through on the implementation of new training protocols emphasizing de-escalation and proportionality.

<sup>222</sup> Victor Hwang, *Call for New Policing in San Francisco: Guardians Not Warriors*, S.F. Chronicle (Feb. 8, 2016), <http://www.sfgate.com/opinion/openforum/article/Call-for-new-policing-in-San-Francisco-6815656.php>.

<sup>223</sup> *Id.*

<sup>224</sup> SF Mayor, Police Chief Announce Reforms to Reduce Officer-Involved Shootings, Rebuild Trust, KTVU (Feb. 22, 2016), <http://www.ktvu.com/news/95129617-story>.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> Police Exec. Research Forum, Critical Issues in Policing Series: Re-Engineering Training on Police Use of Force (2015), <http://www.policeforum.org/assets/reengineeringtraining1.pdf>.

<sup>229</sup> SF Mayor, Police Chief Announce Reforms to Reduce Officer-Involved Shootings: Rebuild Trust, *supra* note 224.

<sup>230</sup> *Id.*

<sup>231</sup> The concept of proportionality came up often during public comment at the Panel's hearings. Creating a culture that embraces proportionality is important in regaining the public's trust and addressing the public's concerns about excessive force.

During the use-of-force revision process, there was substantial debate between the stakeholders on the language governing officers' use of proportionality and de-escalation, and whether officers "should when feasible" (more permissive language) or "shall, when feasible" (more mandatory language) de-escalate and use principles of proportionality.<sup>232</sup> Similarly there was debate on whether officers were limited to "reasonable" force (more permissive) or "necessary" force (more mandatory). The Panel consistently supports the use of the mandatory language to highlight the department's strong commitment to these principles, and to provide to officers the clearest guidelines on how to deploy uses of force.

## **10. The SFPD should expand implicit-bias training, including use-of-force scenario training and community involvement.**

The SFPD should implement mandatory bias training, including implicit-bias training. Implicit bias refers to the "automatic association people make between groups of people and stereotypes about those groups."<sup>233</sup> These implicit associations can influence behavior, and reducing its influence can strengthen the relationship between law enforcement agencies and communities.<sup>234</sup> It is important to distinguish implicit bias from "traditional racism." Data has shown that implicit bias can cause institutions and individuals to act on prejudices, "even in spite of good intentions and nondiscriminatory policies or standards."<sup>235</sup> Implicit-bias training works to reduce these influences, including in areas such as the use of force. Multiple policy experts have suggested that implicit-bias training could have a substantial effect on the reality and perception of unbiased policing in the department, particularly in the context of use of force. Instructing the SFPD on the type of implicit-bias training is outside the scope of this report.

The SFPD appears to have started the process of incorporating bias training into its officer training curriculum. Former Chief Suhr announced that the entire command staff has undergone implicit bias training, and that the SFPD is pursuing a contract that would give all officers and staff implicit-bias and procedural training every other year. At a recent public hearing, former Chief Suhr attested that department-wide implicit-bias training would be implemented by the end of 2016. According to former Chief Suhr, this training would include cultural competency training provided by members of the community. Former Chief Suhr also informed the Panel that he was restarting a class addressing racial profiling that had been discontinued several years ago.

The SFPD should implement implicit-bias training both at the academy level for new cadets and as a regular component of ongoing training for officers. The SFPD should also consider implementing bias training for civilian employees. As to the substance of the training, the SFPD should ensure that its mandatory bias training is interactive, compelling, and includes scenario-based training for use-of-force situations. For example, implicit-bias training should simulate real world scenarios and decide whether to use force against certain suspects from different demographic groups. Multiple witnesses also stressed the importance of developing a training program that is interactive and interesting to participants, otherwise the training risks becoming a formality with little positive effect.

The SFPD should invite members of the community to participate in and observe the training. Conducting the training in conjunction with the community can be beneficial to both the department and the community at large. At a minimum, the SFPD should consider ways to incorporate bias training as part of its community policing and firearms training in Community Police Academy.<sup>236</sup> Community members would be able to gain insight into difficult choices officers have to make, and would also see that the

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<sup>232</sup> During the revision process, the language in the proportionality section was changed without explanation or comment, from initial drafts requiring more mandatory language deleted from later drafts and replaced with more permissive language. The Panel believes that the mandatory language of the initial drafts is most consistent with the principles of 21st century policing that are becoming best practices at departments around the country.

<sup>233</sup> Nat'l Initiative for Bldg. Cmty. Trust & Justice, Implicit Bias, <http://buildingbridges.org/implicitbias/>.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> See Community Police Academy Schedule, S.F. Police Dep't, <http://sanfranciscopolice.org/community-police-academy-schedule/>.

department is taking claims of biased policing seriously. Additionally, police officers would better connect with the community if community members were present at the training. Policy experts strongly endorse community involvement components in implicit-bias training, and have firsthand experience of its success. One expert recently witnessed officer implicit-bias training in St. Louis that included the community, and reported that it was very successful, with a collaborative and positive environment. If well-implemented, therefore, implicit-bias training may not only enhance fairness in the application of use of force but also strengthen the community's confidence in the SFPD.

### **11. The SFPD should expand the definition of what constitutes a reportable use of force.**

To update its data collection policies, the SFPD should explicitly expand the definition of what constitutes a reportable use of force. DGO 5.01 currently only requires that an officer report the use of physical control "when the person is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold." Officers should also report use of force *any time* physical force is used to "overcome resistance," not just when there is an injury. The provision as it stands leaves too much room for officer discretion to determine when a person is "injured." This type of discretion does not mandate accurate reporting of the use of force by SFPD officers.

The SFPD should classify the intentional pointing of a firearm at a person as a reportable use of force in DGO 5.01. This recommendation was made during the revision process and the current language of the revised DGO 5.01 reflects this recommendation. The official use-of-force policy should be easily locatable by the officers as well as the public. Those looking to understand the policy should not have to read the DGOs as well as locate extraneous ad-hoc bulletins. As stated above, amendments to the policies must be reflected in the actual DGOs, and not contained exclusively in a department bulletin.

This expansion of reporting requirements is not a new recommendation issued to the department. In fact, Officer-Involved Shootings: A Five-Year Study by San Francisco Police Department (2010) included a recommendation that "[The SFPD create] a use of force form to be completed by each member employing force *during the performance of their duties*."<sup>237</sup> This recommendation was described in the Five-Year Study as an "implemented change," meaning that "upon reading a draft of [the] study, Chief Gascon directed the implementation [of the] recommendation." But as discussed above, it is not currently the SFPD's policy to require completion of the form whenever force is used.

At the very least, the policy should be internally consistent on the subject of when an officer must report the use of physical control. The current drafts of DGO 5.01 contain slightly inconsistent language defining the term "reportable force." Draft Revised Policy 5.01 section II (F) defines reportable force in part as "any use of force which is required to overcome subject resistance to gain compliance that results in death, injury, complaint of injury in the presence of an officer, or complaint of pain that persists beyond the use of a physical control hold." As discussed above, it also classifies the pointing of conducted energy devices and firearms as a reportable use of force.

However, later in Draft Revised Policy 5.01, in section VII (A), a reportable use force is defined differently, removing the reference to overcoming resistance. This inconsistency in the definition of reportable use of force could result in officer confusion. Therefore, the Panel recommends that the definitions in these sections be consistent, with both definitions encompassing instances where use of force is used to overcome resistance. The Panel will continue to advocate for these changes as the policy enters the negotiations phase.

<sup>237</sup> George Gascon, S.F. Police Dep't, Officer Involved Shootings: A Five-Year Study, 35 (2010), <http://files.policedatacenter.org/documents/sfpd-oisreport.pdf> (emphasis added). This recommendation was based, in part, upon recommendations previously made by PERF that "the SFPD should design a new... Use of Force Report to be completed by all members of the department any time force is used." *Id.*

**12. For reportable uses of force, the SFPD should expand the types of information that it collects and reports for each instance, including demographic information about each subject.**

The SFPD should expand the information that it collects and reports regarding any reportable instance of use of force. DGO 5.01 currently does not require officers reporting use of force to gather nearly enough information or in enough circumstances to determine whether policing is being conducted in a fair and unbiased matter. The implementation of AB 71 and Ordinance 166-15 will also require the SFPD to capture a variety of data points regarding use-of-force incidents as well as officer-involved shootings. The same data points should be collected for *all* reportable uses of force, in addition to the following data points.

1. Gender, race, and age of the subject
2. Subject's action necessitating the use of force, including threat presented by the subject
3. Efforts to de-escalate prior to the use of force
4. Any warning given and if not, why not
5. Type of force used against the officer, the civilian, or both, including the types of weapons used
6. Injury sustained by the subject
7. Injury sustained by the officer(s)
8. Supervisor's name, rank, star number, and the time notified; if applicable, the supervisor's reason for not responding to the scene should also be included
9. Date, time, and location of the incident
10. Whether the person the force was used on was armed, and, if so, the type of weapon
11. Number of officers involved in the incident
12. Number of civilians involved in the incident
13. Brief description regarding the circumstances surrounding the incident, which may include the nature of injuries to officers and civilians and perceptions on behavior or mental disorders

The SFPD's draft revised policies are a step in the right direction, requiring the collection of some of the information described above. But additional information—including, most importantly, the gender, race, age, and any perceived mental disorder of the subject—must be collected to determine whether the SFPD is applying use of force fairly and without bias. The Panel recommended the inclusion of gender, race, and age to the SFPD during the Stakeholders' meeting and suggests that the SFPD also consider the additional points above as it continues to refine its draft revised policies. As discussed below, information from incident reports should be automatically captured in the use-of-force reports. These recommendations, however, are not reflected in the current draft revised policies.

**13. The SFPD should clarify who is responsible for reporting use-of-force information.**

The SFPD should clarify who is responsible for recording information about uses of force. The current DGO 5.01 is unclear about whose duty it is to report a use-of-force incident. Both options of the Draft Revised Policy 5.01 clarify that the officer using force shall provide the required information either directly in an incident report or through a supplemental report (if the incident report is being prepared by another officer). The adopted version of DGO 5.01 clarifies that, absent exceptional circumstances, the officer using force should complete the report.

**14. The SFPD should collect use-of-force reports in an electronic format.**

The SFPD should collect electronic data on use-of-force incidents—this is perhaps the most critical of the recommendations regarding data collection of use-of-force incidents. Specific and exclusive methods for tracking use-of-force incidents should be used that are separate and apart from the preparing of incident

reports. Without adequate data, the SFPD will never be able to fully understand how use-of-force incidents occur, nor will it ever be able to assess whether there is evidence that use of force is being administered in a manner that is inconsistent with fair and unbiased policing.

Moreover, by recording use-of-force incidents in hard copy, by hand, in logs that are physically maintained, the SFPD increases the risk of losing critical data. Officers may forget to record required use-of-force incidents on the log if they must obtain a central “copy” of the log to track the information. Moreover, depending on how much time passes between the use-of-force incident and the actual logging, the officer may forget critical details about the encounter. Finally, maintaining a single, hard-copy file of the logs exposes the SFPD to the possibility that sections of the data could be lost without backup data. Based on the information received from the SFPD, for example, it appears that different stations (or even different officers within the same station) may have different approaches in how they use and maintain the logs.

Policy experts were stunned to learn that a police department as large as the SFPD maintained use-of-force data in hard-copy logs. One expert advised that there are specific software programs that allow law enforcement agencies to easily input and track use-of-force incidents. Using this software also gives management opportunities to perform data analytics; for example, tracking how many incidents of a certain type of use-of-force technique is used, or even whether a single officer is involved in multiple instances of use of force over a short period of time. The SFPD cannot evaluate whether its officers are applying use of force fairly and without bias if they are also not collecting demographic information about the individuals who are involved in use-of-force incidents with SFPD officers. The use of electronic data collection and software would vastly improve the SFPD’s ability to track use-of-force incidents and to evaluate and corroborate that its use-of-force policies are being applied fairly. As noted above, using software to track use-of-force incidents appears to be relatively routine for several law enforcement agencies of all sizes.

The report Officer-Involved Shootings: A Five-Year Study by San Francisco Police Department (2010) also specifically recommended that use-of-force data be collected in a way that makes electronic storage and analysis easy: “[The SFPD should create] a use of force form ... designed ... to allow for a format that can be electronically scanned for the purpose of extracting information in an automated format for analysis and accounting purposes.” This recommendation was also described in the report as an “implemented change,” meaning that then-Chief Gascón directed that the recommendation be implemented. The Panel is unaware of the status of these efforts; what is clear is that the use-of-force logs are currently nowhere close to a format that would allow for easy automated analysis.

Once the SFPD has adopted electronic data collection regarding uses of force, the department should adopt regular procedures for evaluating the data to ensure that use-of-force policies are being implemented appropriately and that data collection of reportable uses of force is occurring consistently—and to identify potentially problematic trends early based on the data. While collection of data is the first step in improving the SFPD’s current policies, such a step is meaningless without actual analysis of the collected data by both internal and external sources. The SFPD should also provide annual reports of its use-of-force data to supplement the reports that it is already required to submit under AB 71.

The SFPD should ensure that it implements an automated system that integrates use-of-force reports into its Early Intervention System (EIS).<sup>238</sup> The EIS is an internal point system intended to track different officer conduct, including reportable uses of force. Once an officer reaches a certain level of points within the system, the EIS should trigger a warning and prompt a review or other intervention by a supervisor, the EIS Unit, or a member of the command staff. The Panel did not receive documentation necessary to ascertain whether the SFPD currently incorporates information from the paper use-of-force logs into the point system within the EIS. With automated systems, the SFPD would be able to identify and address potential trends with greater accuracy and thereby improve the efficacy of its EIS.

238 See Chapter 4: Internal Discipline and Chapter 5: External Oversight for more on the Early Intervention System.

During the use-of-force policies revision process, the Panel recommended that the SFPD require robust data collection, analysis, and distribution to the public—critical to transparent, accountable, and effective community policing. The consensus version adopted by the Commission does include clearer electronic data collection requirements.

**15. The SFPD should evaluate how body-worn camera footage can improve scenario-based training.<sup>239</sup>**

As the SFPD rolls out its body-worn cameras, it should evaluate how body camera footage might be useful in its training programs, particularly in de-escalation training. Former Chief Whent of the Oakland Police noted that body cameras have provided good evidence in internal affairs and criminal investigations, because the police department now has video footage of almost every complaint that comes into the department. The SFPD could take this one step further, and analyze body camera footage to get a comprehensive view of how officers are implementing their training and identify candidates for remedial training. The SFPD policy mentions the use of footage to review police procedures and tactics, although it does not contemplate how this would work in practice.<sup>240</sup> The SFPD should therefore develop a process by which it will incorporate the review and use of body-worn camera footage in its training programs.

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<sup>239</sup> See Chapter 1: Stops, Searches, and Arrests for more on body-worn cameras.

<sup>240</sup> S.F. Police Comm'n, Body Worn Cameras Policy: Recommended Draft (2015), [http://www.mayors.org/2015/04/20/2015-04-20-FileCenter/Documents\\_27676-Bon\\_20Wom...Camera%20Policy%2015\\_Draft\\_2015\\_04-20and...](http://www.mayors.org/2015/04/20/2015-04-20-FileCenter/Documents_27676-Bon_20Wom...Camera%20Policy%2015_Draft_2015_04-20and...)

# Chapter 4:

## Internal Discipline

### Background

This chapter focuses on the internal discipline process within the SFPD when an officer is alleged to have committed misconduct. The Panel analyzed the process that ensues when a complaint arises internally within the SFPD, as well as the steps that the SFPD takes after it receives a complaint that has been sustained by the Office of Citizen Complaints. The Panel found that the internal discipline process is opaque, and the SFPD does not publish information on officer discipline in any meaningful way. The Early Intervention System is seldom used and what constitutes an intervention is unclear.<sup>241</sup>

#### Individuals and Groups Involved in Officer Discipline

A number of different groups or individuals play a role in officer discipline. Many are discussed in detail in other sections of this report (for example, Chapter 5: External Oversight has an extensive discussion of the OCC). For the purpose of providing context to the internal discipline process, each actor is described below.

**IAD:** The Internal Affairs Division of the SFPD—formerly known as the Management Control Division—has primary responsibility for internal discipline. IAD is broken into the Administrative Division and the Criminal Division. The administrative side of IAD investigates complaints raised internally to the SFPD by other officers and allegations concerning officers' off-duty conduct even where initiated by citizens. The criminal side of IAD investigates officers' possible violations of the law.

**OCC:** The San Francisco Office of Citizen Complaints' primary role is to investigate complaints filed by members of the public regarding alleged misconduct by on-duty SFPD personnel. As part of this role, the OCC makes recommendations regarding the discipline of officers where its investigation reveals misconduct.

**POA:** The San Francisco Police Officers' Association is the union designated to bargain on behalf of SFPD officers with the city. Membership in the POA is optional; however, currently all but 14 of more than 2,000 officers are members. One of the roles played by the POA is to provide representation for officers in disciplinary interviews and hearings. It does so by providing either defense representatives—active duty officers who are trained to review pending complaints against officers, help protect an officer's rights under the state's Peace Officer's Bill of Rights, and otherwise advocate for the officer in the disciplinary process—or attorneys. When an officer elects to be represented by an attorney, the POA recommends counsel from a POA-selected panel, and, where the conduct falls within the course and scope of an officer's duty, pays for counsel. Decisions on counsel are made by the director of the POA Legal Defense Fund, Paul Chignell, and the POA Legal Defense Fund board of trustees.

<sup>241</sup> This report does not address criminal investigations of officers, except to note where that work has an impact on non-criminal disciplinary investigations.

**Chief and Deputy Chiefs:** The Chief is responsible for most disciplinary decisions. He or she has the authority to impose discipline of up to 10 days' suspension, and can recommend further discipline, including termination, to the Police Commission. Through the Deputy Chiefs, the Chief conducts hearings for all disciplinary matters brought by IAD for discipline of up to 10 days' suspension. The Chief, through resource decisions and staffing decisions, also has a significant influence on the makeup of IAD and on how aggressively disciplinary matters are pursued.

**Police Commission:** The Police Commission sets policy for the department and hears all disciplinary cases, whether arising through the OCC or IAD, in which an officer faces a potential punishment of either termination or a suspension of longer than 10 days. It also hears appeals from cases adjudicated by the Chief.

## IAD Structure

IAD is part of the Risk Management Office, which includes IAD Legal, IAD Criminal, IAD Admin., and the Early Intervention System ("EIS"). The IAD Administrative Division is housed at the new Public Safety Building, and its offices are separate from the IAD Criminal Division.

The Captain of Risk Management is the commanding officer of IAD. Below him, two lieutenants serve as officers in charge of IAD Administrative (Admin) and IAD Criminal, respectively. IAD Admin is then divided into three teams of sergeants responsible for conducting investigations. Officer-Involved Shootings (OIS) is a four-member team that investigates all officer-involved shootings and officer weapon discharges. Equal Employment Opportunity (EEO) is a single-member team that liaises with the City Attorney concerning any allegations of violation of equal employment policies. The remaining team—referred to generally as "Admin"—handles investigations of all other non-criminal complaints against officers that arise internally.

IAD Legal consists of two attorneys who are responsible for "prosecuting" all IAD Admin cases that go to a Chief's hearing or a Police Commission hearing.

## IAD Case Assignment and Investigation

When a complaint is raised against an officer by a fellow officer or superior, that complaint will make its way through the chain of command and ultimately to IAD Admin for assignment to an investigator. The Lieutenant in charge of IAD Admin makes case assignments based on the nature of the complaint, investigators' experience, investigators' workloads, and potential conflicts where the investigator may know the officer under investigation.<sup>242</sup> This process for receiving and assigning complaints can occur very quickly, if necessary, based on the severity of the case.

In parallel with the above-described process for receiving and assigning complaints, IAD Legal is also notified of complaints and begins any paperwork necessary to place an officer on paid administrative leave or to disarm the officer. If the case could potentially lead to termination of the officer, IAD Legal will also process the paperwork to move the officer out of the station, give him or her a non-public-contact assignment, and begin preparing Police Commission charges that may follow completion of the IAD Criminal investigation. An officer can be placed on paid administrative leave for 30 days, and within that time, the officer is entitled to a return-to-duty hearing. If the officer is not going to be charged criminally, then it is possible he or she will be assigned to a position where the officer's interactions with the public are limited. Whether the officer is assigned to such a position depends on the level of the accused misconduct.

Witnesses indicated that IAD Admin generally prefers the following investigation process: the complainant is interviewed first, eyewitnesses are interviewed next, and the named officer is interviewed last. There are two investigators at each interview. Officers are required to be interviewed while on duty. IAD

<sup>242</sup> For some more minor administrative infractions, such as failing to go to the firing range, the investigation may be handled by someone in the officer's chain of command instead. The IAD Admin Lieutenant determines whether a particular case is appropriate for assignment back to the chain of command.

Admin has the authority to compel an officer to appear for an interview and respond to questions. During the interview process, the officer has protections under the Public Safety Officers Procedural Bill of Rights (POBR), including the right to a certain amount of notice and the right to a representative of his or her choice at the interview. At interviews, officers are often represented by a POA defense representative.

Officers are sometimes represented by an attorney instead of a POA defense representative. The POA, generally through the Fund Administrator, recommends to the officer whether it is appropriate to take a defense representative or an attorney. If an attorney is selected, the trustees and the Fund Administrator generally suggest a specific attorney based on the nature of the complaint; for example, some attorneys are particularly well-versed in the department's general orders and one is an appellate specialist, and so those attorneys would be recommended in cases involving their specialties. In most instances, the officer accepts the recommendation of the POA. This results in nine or 10 of the 24 attorneys on the panel doing the majority of the work.

Throughout the investigation, the investigator may choose to communicate with IAD Legal, and IAD Legal may provide thoughts on evidence that should be gathered or questions asked of witnesses.

Witnesses reported that as part of the investigation, the named officer's history of prior complaints (sustained and not sustained by IAD and sustained only by the OCC) is considered. IAD receives PDFs of all complaints filed with the OCC, but has no effective mechanism for review and tracking of OCC complaints that are not sustained.

Certain routine cases are not investigated by IAD, but are sent to an officer's station for investigation with a request to investigate and revert in 14 to 30 days. These cases generally involve minor violations such as failure to re-qualify at the shooting range.

### **Investigation Reporting**

Witnesses reported that the investigator assembles a case file upon completion of the investigation. The case file will contain attachments and exhibits, such as the original complaint and the evidence gathered. The investigator will also prepare an investigative summary describing how the investigation was conducted and the import of the various attachments to the report. In the summary, the investigator makes a finding about what DGO or DB has been violated and/or explains why the conduct was improper.

The investigator's report is reviewed by the IAD Administrative Lieutenant who will then write an abridged version of the investigation, summarizing the evidence chronologically. He or she will also say whether he/she concurs with the investigator's finding of whether there has or has not been a violation of a DGO or DB. The lieutenant may also, at this time, suggest that further work should be done by the investigator. If he feels that the investigation is sufficient, he will also make a recommendation on discipline. Once this is done, the case file is passed to IAD Legal. Witnesses described that while in the past IAD Legal would review the investigative file and give a recommendation on discipline, the role of the IAD attorney in the investigative process and discipline decision has recently been curtailed.

The file then goes up the chain of command to the Captain and the Deputy Chief. Through this process, each person in the chain of command reviews the findings, states whether he or she concurs with them, and notes agreement or adjustments to the recommended discipline. People higher up the chain of command may ask investigative questions, such as whether an investigator considered a particular avenue of investigation and, while it is infrequent, they can send the investigator out to conduct further investigation.

Following this process, the Lieutenant will present the case to the Chief during a standing weekly meeting. The Chief then chooses to sustain or not sustain the complaint, and the level of discipline to impose.

At various points in the investigatory process, the POA defense representative may make a request to the investigator, IAD Administrative Lieutenant, or the Chief to conduct further investigation. The POA

defense representative may also offer information or evidence that he or she believes is relevant to the officer's case.

## Hearings

Following a sustained complaint, witnesses reported that IAD Legal will prepare a hearing notice that includes the recommended discipline to be imposed on the officer. The officer may choose at that time to accept the findings and recommended discipline or seek a hearing. The recommended discipline stated in the hearing notice becomes the maximum level of discipline that can be imposed on the officer, binding the Chief or Police Commission.

The Chief's hearings, which are known elsewhere as *Skelly* hearings, have been delegated to Deputy Chiefs.<sup>243</sup> They are generally informal and often approached as an opportunity to find a mutually acceptable resolution to the matter. IAD Legal presents the case to the Deputy Chief. The officer and the officer's defense representative or attorney are present and may present additional information. The hearings are recorded.

Following the Chief's hearing, the Deputy Chief and IAD Legal will discuss the officer's responses and candor. IAD Legal will then draft a summary of the recommended discipline (if any) based on the hearing. That summary then goes to the Deputy Chief and then to the Chief who decides whether to concur with the recommendation. Once the Chief signs off, IAD Legal writes the final disciplinary notice detailing what discipline (if any) will be imposed. This hearing process is followed for all cases involving recommended discipline of 10 working days of suspension or less (the maximum authority of the Chief).

Where the discipline recommended is termination or a suspension of more than 10 working days, the hearing is conducted by the Police Commission, which is the only body with the authority to impose this higher level of punishment. The Police Commission also hears appeals from officers for lower levels of discipline imposed directly by the Chief.<sup>244</sup>

A series of laws govern the discipline of officers, notably California's POBR,<sup>245</sup> which contains a one-year statute of limitations from the time a lieutenant, or officer of higher rank, receives notice of a violation to when the accused officer is formally served with discipline. If this process takes more than one year, the case will be time-barred. Disciplinary hearings before the Chief and before the Commission are confidential under the California Supreme Court's decision in *Copley Press*,<sup>246</sup> interpreting POBR. This law also contains various procedural protections for the officers, such as notice requirements and the right to a representative.

## Actions Initiated by the OCC

In addition to its responsibilities in investigating and recommending officer discipline for internal complaints, IAD also plays a role in connection with complaints investigated by the OCC. Witnesses stated that an IAD Lieutenant reviews sustained OCC complaints and has the authority to further investigate them before reporting a recommendation to the Chief regarding discipline for those complaints. Sustained OCC complaints then proceed through the disciplinary hearing process in the same manner as IAD complaints with the Chief setting the level of discipline an officer receives. The Chief may agree or disagree with the OCC's decision to sustain a complaint.

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<sup>243</sup> *Skelly v. State Personnel Bd.*, 15 Cal. 3d 194 (1975).

<sup>244</sup> These processes are discussed in detail in Chapter 5: External Oversight.

<sup>245</sup> Cal. Gov't Code § 3300 et seq.

<sup>246</sup> *Copley Press, Inc. v. Superior Court*, 39 Cal. 4th 1272 (2006).

## The Early Intervention System

DGO 3.19 requires the SFPD to utilize an EIS to identify officers who may be on a path to regular or significant misconduct.<sup>247</sup> The system uses data on officer conduct ranging from minor to significant conduct (such as use of force) to assign points to an officer, with a certain number of points triggering a warning in the system. That warning is then supposed to prompt review and intervention by a supervisor, the EIS Unit, or a member of the command staff. According to a recent presentation provided to the Police Commission by the SFPD, "EIS is not about warning supervisors about problem officers, but rather a way to help officers before problems occur."

Based on a 2014 quarterly report of EIS results and the department's 2015 presentation to the Police Commission,<sup>248</sup> officer conduct is grouped into ten key performance indicators: use of force, officer-involved shootings, officer-involved firearm discharge, citizen complaints to OCC, IAD complaints, EEO complaints, civilian suits, tort claims, on-duty collisions, and vehicle pursuits. There are six different thresholds that may trigger an EIS alert. For example, one instance of an officer-involved shooting, or three OCC complaints against an officer within six months, would each trigger an alert. There are additionally 14 associated factors (which include department commendations and awards, number of arrests made, and training history), that are also entered into the EIS system.

The EIS system uses this information to generate officer-specific alerts that are then reviewed by the EIS Sergeant. That sergeant determines if supervisory review is warranted. If it is, the officer's supervisors are notified of the alert. They must then evaluate whether a pattern of at-risk behavior exists and decide whether intervention is appropriate. Thus, the decision to intervene is made at two points: first by the EIS sergeant, and second by the officer's supervisor.

## Findings

### 1. The SFPD's internal discipline process is opaque.

The above description of the IAD disciplinary process was compiled primarily through interviews with IAD employees. There is very little public written material that describes the internal discipline process or how IAD functions. The Panel's findings and recommendations are impacted by these limitations, as it was dependent on the information obtained through witness interviews, with little opportunity to verify that information with process or policy documentation.

DGO 2.07 sets out a portion of the disciplinary system described above, but it does not explain investigative procedures and has not been updated since July 1994. This DGO defines the types of discipline available (admonishment, written reprimand, suspension, etc.), and explains the notification, hearing, and appeal processes, but not in the depth of detail presented above. It does not set out how IAD is notified of or investigates complaints.

The lack of transparency into the internal discipline process—IAD processes and actions are not tracked and/or recorded in any publicly available way—is a systemic problem. Unlike the OCC, IAD publishes no statistics about the number and types of cases it investigates, the percentage of complaints that are sustained, or any factual summaries of the complaints it investigates. When the Panel requested that the SFPD provide it with the number of bias complaints investigated or sustained over the last five years, the SFPD could not respond to the request because it did not track this data. This lack of general transparency is inherently detrimental to fair and effective officer discipline, both because it hinders external oversight (formal or informal) and because it suggests a lack of self-evaluation through robust and regular audit or statistical analysis, which is essential to a police department's effective discipline of its officers.

<sup>247</sup> See Chapter 5: External Oversight for more on the Early Intervention System.

<sup>248</sup> The 2014 EIS Reports were obtained through a Public Records Act request to the Police Commission and were not readily available on the SFPD's website.

## **2. It is unclear whether the Chief's disciplinary authority is appropriate.**

Disciplinary Guidelines exist to help IAD, the Chief, and Police Commission impose consistent discipline, which is critical for ensuring fairness and accountability. The SFPD's Disciplinary Guidelines—last published in 1994—are outdated. Witnesses stated that they were viewed by IAD only as loosely informative of the appropriate discipline for a given case.

It is unclear whether the disciplinary guidelines are consistently and fairly applied by the Chief in imposing discipline up to 10 days' suspension. While the SFPD publishes the disciplinary outcome of cases sustained by the Chief on the Police Commission's website, it does not publish any of the facts underlying the violation (something that the OCC does on a monthly basis). This makes it impossible for the public to determine whether the Chief is imposing appropriate and effective punishment.

Stakeholders hold differing viewpoints as to whether the Chief should be given the authority to impose discipline greater than 10 working days' suspension. One view is that the Chief, as the head of the SFPD, should be able to discipline his officers, including terminating them, without restriction, and assume the corresponding accountability for the conduct of his police force. The opposing view, however, largely focuses on the specific individual who may hold the position of Chief and the associated risk—different Chiefs may impose discipline more or less fairly, and the current limitation on the Chief's authority protects against such variation where the punishment is more severe.

Without information concerning guidelines used by the Chief to impose discipline and whether it is imposed consistently, and recognizing that there currently are limited external oversight mechanisms in place to ensure fair and consistent application of discipline by the Chief, the Panel does not have the information it needs in order to make a recommendation as to whether the scope of the Chief's authority is appropriate.

## **3. The SFPD does not track or evaluate discipline data in a robust manner.**

The department does not use a comprehensive system for collecting data related to either the discipline process itself (e.g., investigatory timelines, interviews conducted, etc.) or the outcomes of disciplinary proceedings originating through IAD.

IAD uses the AIM (short for Administrative Investigations Management) system to track complaints, investigations, and outcomes. Each investigation is tracked in the database by its case number. For each case, the following data are entered into AIM: case number, the named officer, the allegation, the date the allegation was reported, where the case is in the process (for example what notices have been sent), and what the timeline of the case will be going forward. Importantly, for purposes of complying with the one-year statute of limitations, the date used in the system is the date that complaint was first raised to a supervisor. However, there is no formalized training in the use of AIM and, thus, understanding and competency in using AIM may vary across IAD Admin and the SFPD.

The current Lieutenant for IAD Admin asserted that he reviews the AIM system every couple of months to see if there are any cases approaching the statute of limitations.<sup>249</sup> No audit is conducted by the SFPD or the City Controller of this system.

Each investigator is also responsible for updating a spreadsheet on a shared desktop with his or her investigation's progress. The IAD Admin Lieutenant also stated that he reviews that spreadsheet regularly and, for pressing cases, reports progress to the Chief.

Notations in AIM contain the specific allegations and the outcome of each complaint. The system allows for a search for similar prior cases (which the Lieutenant may do in order to make a disciplinary recommendation that takes prior similar cases into consideration).

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<sup>249</sup> Referring to the one-year statute of limitations for imposing discipline on an officer found in the Peace Officer's Bill of Rights at section 3304 of the Government Code.

Through AIM, it is also possible to see when some officers are repeat offenders or “frequent fliers.” The AIM system contains write-ups of each case and in each case are one to two sentences summarizing each prior case against an officer. However, AIM does not include data regarding OCC complaints that are not sustained. Moreover, AIM is not well-designed for statistical analysis and reporting which may further limit its utility in identifying and tracking repeat offenders.

IAD Legal has its own tracking systems, which track the officers who have been disarmed, officers who have been reassigned, and officers who have been suspended. It also tracks the Police Commission cases, showing what steps have happened already and what needs to happen next. Finally, the department keeps track of admonishments, training directives, and notices of reprimand.

Separately, the POA maintains information about complaints against officers in a spreadsheet and files for each officer who received a complaint. Witnesses indicated that this record keeping is not systematic or available to the SFPD or public.

Despite these various methods of tracking the cases through IAD Admin, there are certain gaps in the tracking of disciplinary cases by the SFPD. The various tracking systems are not uniform or openly shared. It does not appear that the information contained in EIS feeds into AIM or is otherwise accessible to IAD Admin as part of the investigative process. There are limits in AIM’s functionality and in its ability to provide statistical analysis. The effective use of these systems appears to depend substantially on those officers who have significant institutional knowledge obtained through years spent working in IAD. Such institutional knowledge—for example, recall of a similar case—is not transferable. The tracking tools are, therefore, less effective than they should be in helping ensure long-term consistency and fairness in discipline.

#### **4. The process from the filing of a complaint to resolution is too slow and can be subject to strategic manipulation.**

In connection with both internal and external officer discipline, witnesses’ general assessment was that the process from the filing of a complaint to resolution is too slow and can be subject to strategic manipulation by officers seeking to delay the imposition of discipline. There is a risk that cases, including those arising from the texting scandal, have languished and not been investigated, ultimately exceeding the one-year statute of limitations to investigate allegations against an officer set forth in the POBR and preventing the possibility of discipline for serious officer misconduct, although according to the Lieutenant for IAD Admin, only three cases have gone past the statute of limitations period in the past five years. With no external audit or known repercussions for IAD, the current timeliness of investigations is dependent on the practices and management of the lieutenant in charge.

A recent article revealed that during former Chief Suhr’s tenure, 16 sustained cases—outside of those involving the texting scandal—resulted in no discipline because the statute of limitations lapsed.<sup>250</sup> This raises further questions regarding the accuracy and veracity of the information that the SFPD provided to the Panel—the department’s response to a direct query about the number of cases that had resulted in no discipline because the statute of limitations had lapsed was three cases.<sup>251</sup>

Separately, as explained in Chapter 5: External Oversight, OCC-initiated complaints are investigated too slowly. The result is that insufficient time may remain for IAD to review the OCC findings and for those findings to be considered and accepted or rejected at the Chief or Police Commission level before the statute of limitations has run out.

<sup>250</sup> Jonah Owen Lamb, *SFPD Allowed Statute of Limitations to Lapse on More Disciplinary Cases*, S.F. Examiner (June 24, 2016), <http://www.sfxaminer.com/sfpd-allowed-statute-limitations-lapse-disciplinary-cases/>.

<sup>251</sup> In the article, the department attests that only three of 16 cases would have resulted in written discipline. This does not clarify why the Panel was not informed about the existence of the 13 additional cases where discipline could not be imposed because of the statute of limitations lapsing. The explanation that the statute of limitations was “allowed to lapse” on these cases reads as a justification benefited by hindsight and does not absolve the department of the obligation to complete and make a determination on all investigations within the statute of limitations, regardless of seriousness of misconduct. See Lamb, *SFPD Allowed Statute of Limitations to Lapse on More Disciplinary Cases*, *supra* note 250.

One witness described timeliness issues resulting in IAD investigators interviewing accused officers without sufficient notice or an opportunity for the officers to have a chosen representative present. This statement, however, was denied by another officer currently working within IAD. To the extent that such interviews have occurred, it again suggests a lack of systemic accountability on timeliness and process.

There have also been instances where officers (through their representative or counsel) have sought to delay their hearing date until they reach retirement, as a way to obtain a preferred negotiated settlement. Or, if they are already eligible to retire, they can delay a hearing for a sufficient time to increase their years of service and consequently increase their pension.

It is unclear to what extent officers can benefit from this sort of delay. Witnesses reported that IAD generally continues investigating a retired or resigned officer and pursuing disciplinary actions against the officer that may impact his or her retirement benefits, including the ability to continue to carry a concealed weapon. In addition, the disciplinary notation in such an officer's file will also be seen by any agency to which the officer may apply to for subsequent employment because officers will generally sign a waiver to allow other state or federal agencies to see their personnel files as part of the job application process. Despite these reports, at least some officers facing discipline appear to believe they will benefit from delaying their hearing until retirement, which witnesses reported sometimes happens.

Although witnesses relayed that it is IAD Admin's practice to continue to investigate an officer even after he or she resigns, recent high-profile allegations made by Officer Patricia Burley claim the opposite. Burley had reported embezzlement by a fellow officer to IAD. IAD investigated the complaint and the officer involved repaid the money he had embezzled and resigned. Burley alleges that once the officer resigned, no further investigation of his conduct occurred.<sup>252</sup> The Panel was not able to independently verify Burley's allegations.

## **5. Protections for whistleblowers do not appear to be an area of emphasis.**

The IAD investigation system depends on officers reporting misconduct of fellow officers and then cooperating with IAD investigators. If officers fear retaliation for doing so, then they might be reluctant to come forward. Section 4.115 of the Campaign and Governmental Conduct Code, which applies to all city employees, including SFPD officers and employees, creates some protections for whistleblowers, but it is unclear if it extends to those who report all types of SFPD policy violations. The ordinance provides that "[n]o City officer or employee may terminate, demote, suspend or take other similar adverse employment action against any City officer or employee because the officer or employee has in good faith (i) filed a complaint with the Ethics Commission, Controller, District Attorney or City Attorney, or a written complaint with the complainant's department . . ." but only for certain violations, including "local campaign finance, lobbying, conflicts of interest or governmental ethics laws, regulations or rules." While violating a DGO or DB is grounds for discipline, it is not clear whether all DGOs or DBs would be encompassed within the ordinance's scope. There is no DGO that applies the broad protections that the City affords to whistleblowers to officers who report violations of SFPD policy to IAD.<sup>253</sup>

The recent high-profile example of Officer Burley suggests that retaliation might occur. According to Officer Burley, she was dismayed that the SFPD did not continue to investigate the officer whom she reported. Frustrated by the unwillingness to pursue the investigation, Burley decided to tell her story anonymously to the media. According to Burley, IAD Admin then began investigating her. She alleges that this investigation was ordered by former Chief Suhr and was in retaliation for taking the story to the media,<sup>254</sup> although, again, the Panel was unable to verify this allegation.

<sup>252</sup> Jonah Owen Lamb, *SFPD Whistleblower Claims Chief Suhr Forced Her to Retire*, S.F. Examiner (May 18, 2016), <http://www.sfxaminer.com/whistleblower-claims-chief-suhr-forced-retire>.

<sup>253</sup> DGO 11.07 prohibits retaliation against officers who report discrimination, harassment, or other retaliation, but not more generally.

<sup>254</sup> Officer Burley's administrative complaint can be found at *Former SFPD Officer Alleges Retaliation for Whistleblowing, Files Suit*, KTVU (May 18, 2016), <http://www.ktvu.com/news/14377473#sthash>.

## **6. IAD positions have traditionally been viewed as a relatively low-status position within SFPD, although there is some evidence that is changing.**

In the past, a position within IAD was not considered by an officer to be a good career move. While improvements to the status of IAD officers within the SFPD have been made, it is unclear today if time spent within IAD will advance an officer's career. Officers working within IAD are generally asked to do so by the Chief.

Interviewees further expressed a sense that, in the past, a stint in IAD was viewed as a hindrance to their careers, and that IAD officers faced scorn from other officers, who referred to IAD as "headhunters." This resulted in a lack of motivation within IAD to complete comprehensive investigations and efforts by officers to leave IAD as quickly as possible. Interviewees also noted that IAD has been viewed as an administrative job, whereas higher level officers generally seek field work.

The department has made some improvements in the status of an IAD position. Now, all IAD investigators are sergeants, and the IAD Admin Lieutenant stated that he currently has his pick of officers who all want to join IAD (which include officers applying for the position and those identified by the Chief or IAD Admin Lieutenant). One current IAD member noted that, while he does not view the position as a bad career move, a certain stigma still attaches to the job among some groups of officers.

## **7. SFPD leadership sets a highly influential tone regarding discipline and accountability.**

The Chief, Deputy Chiefs, and Captains can greatly influence whether line officers follow the rules and whether discipline is enforced. This level of influence, while necessary and desirable, also raised concerns about disciplinary consistency and accountability within the department.

As an example, during the administration of SFPD Chief Heather Fong (Chief from 2004 to 2009), large numbers of officers did not go to the shooting range, as required. When she began imposing discipline for failure to comply with firearms qualification requirements, officers responded by going to the range more regularly. Similarly, there was a time when certain captains who did not agree with disciplinary complaints would simply not serve them on the officers. The sustained complaints would sit on their desks, not served, until discipline was time-barred by POBR. When Chief Fong made clear that complaints against officers had to be served timely by captains, they were usually served, and more captains got on board with fulfilling their role in the disciplinary process. Conversely, a former SFPD employee stated that when chiefs made it clear that OCC or IAD interviews were not important or that discipline cases would not be tracked or followed-up, officers routinely skipped interviews and held less respect for the disciplinary process.

Personnel choices matter in this process; when IAD has a strong lieutenant, cases have been handled in a more thorough and efficient way, they are tracked, and the lieutenant ensures that they are properly followed up on. When people who advocate for proper discipline are terminated summarily, or sent to seemingly punitive assignments on graveyard shifts far from their home station, that can send an opposite message. It is essential that the right personnel are in place within IAD and it is equally if not more essential that command staff be held accountable for properly supporting and following the disciplinary process.

## **8. The POA plays a role in the SFPD's disciplinary process.**

The POA plays several critical roles in the IAD disciplinary process. First, it provides accused officers with representation in the form of defense representatives (active duty officers trained to represent officers at disciplinary interviews) or attorneys. These representatives can bring more evidence to a case and advocate on behalf officers in hearings.

Second, members of the POA leadership also occasionally request that people within IAD or within the Chief's office further review a complaint, even after it has been sustained. To the extent this involves the submission of additional or overlooked evidence, or a reasoned basis for suggesting that a more thorough investigation needs to be done, it appears to be helpful and can appropriately fill out the investigatory files.

The Panel did not learn of any situation where the POA attempted to improperly influence the outcome of a case through provision of evidence or exercising pressure on IAD to conduct the investigation in any particular way.

Finally, the SFPD has an obligation to meet and confer with the POA before finalizing any changes in the disciplinary process. One such change might include updating the disciplinary guidelines. One witness indicated that the disciplinary guidelines have not been updated since 1994, at least in part, because of a reluctance by the SFPD to engage in the process with the POA.

### **9. The SFPD rarely intervenes when Early Intervention System warnings are triggered.**

Instances of intervention based on EIS warnings are low, and what constitutes an "intervention" is unclear. The recent report to the Police Commission indicates that in 2015, 156 officers had alerts in EIS. Two officers each had eight or more alerts and 15 officers had five or more alerts each. Despite this, only nine officers received an intervention. Three of these nine interventions appeared to be aimed at curing an officer's repeated failure to appear in court. A 2014 quarterly report indicates that from 2009 (when SFPD began using EIS) through October 2014, there were 42 interventions arising from 2,081 EIS alerts (with 79 alerts still pending review).

## **Recommendations**

### **1. The SFPD should publish and adhere to updated disciplinary guidelines.**

The SFPD's Disciplinary Guidelines date from 1994 and have not been updated since that time. Although these guidelines address the imposition of different levels of discipline in connection with different violations of rules or bad conduct, they are not used or adhered to in any consistent manner. Rather, it appears that officers reviewing disciplinary reports are more likely to apply their own assessments of the appropriate discipline based on their own experience. Updated and clear guidelines used by all of the parties involved in officer discipline will improve the fairness, consistency, and transparency of the process in at least the following ways.

- Allow the Department to communicate its stance on different types of violations to officers and the public
- Help ensure uniformity in discipline
- Encourage an efficient settlement process that will not only move disciplinary matters to completion quickly, but also will allow all parties to find the right disciplinary result with full information
- Set a base from which the Commission and Chief can depart based on specific facts, wherein they would be expected to articulate their rationale to do so in a given instance, similar to how federal District Court judges depart from the United States Sentencing Guidelines
- Paired with robust tracking and public reporting of disciplinary actions, increase transparency and allow members of the public and interested groups to participate knowledgeably in the ongoing improvement of officer discipline

### **2. The SFPD should implement a single, department-wide system to track discipline and regularly report data to the public.**

Essential to improving the internal disciplinary system is the comprehensive tracking of data from all points in the disciplinary process. Although the SFPD currently has tracking systems, they are not comprehensive and thus not as effective as they could and should be. Any new system should include archived disciplinary information, including information contained in EIS. It should be dynamic enough to create reports on all aspects of discipline including time from complaint to hearing, findings, and disciplinary measures imposed. It should allow for collection and reporting of this data, both in connection with specific officers

and on a statistical basis that can be shared publicly within the requirements of the state's POBR. Finally, this system should be accessible (with necessary privacy protections built in) by IAD, OCC, the Chief, and the Commission. This would allow, for example, IAD to see and search complaints filed with the OCC that are not sustained, which it currently cannot do efficiently. An internal disciplinary system may further be utilized in connection with proper tracking and reporting under *Brady*.

At a minimum, any comprehensive tracking system should document the following information regarding an IAD disciplinary proceeding.

1. Origin of the case (e.g., from the OCC)
2. When the case came into IAD and/or OCC
3. Officer named in the complaint
4. When the officer received notice of the allegation
5. When the section 3304 deadline (statute of limitations) elapses
6. Which investigator the case was assigned to and date assigned
7. When the investigator issued the report
8. Recommendation made on the original complaint
9. Other complaints added in the course of investigation
10. Previous complaints, if any, that were reviewed in the course of the investigation
11. Recommendation made on the added complaints
12. When the IAD Lieutenant received the investigator's report
13. Recommendation of the IAD Lieutenant
14. When the case was reviewed with the Chief
15. Chief's recommendation
16. When the hearing notice was generated to serve on the officer
17. When the hearing notice was served on the officer
18. When the Chief's hearing or Police Commission hearing took place
19. Ultimate outcome and disciplinary sentence and when reached
20. Whether the case went beyond the statute of limitations
21. Whether the discipline occurred and dates of completion or imposition

This information, except the officer's identity, which must be withheld under California law, should be made public through regular detailed reports or other statistical reporting similar to that provided by OCC. This way, the public can know what is being investigated by IAD and any delays or bottlenecks cropping up can be spotted and addressed.

The need for more transparency was underscored by the Panel's attempts to gather information on IAD cases. Because the department does not publish such information and refused to produce documents that might shed light on officer discipline outcomes, the Panel was forced to rely on witness testimony, including testimony from the Lieutenant in charge of IAD Admin. As noted above, the Lieutenant's testimony regarding the number of disciplinary cases where the statute of limitations lapsed is at odds with a recent media report.<sup>255</sup> This type of basic information should be readily available to the public.

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<sup>255</sup> Lamb, *SFPD Allowed Statute of Limitations to Lapse on More Disciplinary Cases*, *supra* note 250.

### **3. The SFPD should document and audit its internal discipline process.**

A significant challenge to the Panel's review and analysis of internal discipline was the lack of comprehensive documentation of the disciplinary investigation process. Both the public and officers should have access to a single clear document that sets forth the discipline process from complaint initiation through hearing and appeal. Such a document would be a training tool for investigators, a resource for officers faced with an investigation, and informative to the public or other oversight bodies where process questions are raised. While DGO 2.07 sets out certain aspects of the process described in this report, the Panel had to rely on witness interviews to fill in the many gaps in the DGO, which has not been updated since July 1994. The lack of clear documentation hinders the transparency and legitimacy of that process unnecessarily.

As recommended above, IAD investigators should be required to use the tracking system and statistics regarding the timeliness of investigations should be made public. A formalized requirement should be instated for the IAD Admin Lieutenant to regularly audit AIM to ensure that pending statute of limitations deadlines continue to be met. An external audit process on an annual basis may also be appropriate.

The department should consider implementing appropriate employment penalties against an investigator or, where warranted, IAD commanding officers, for investigations that are not completed within the statute of limitations. In turn, guidelines to aid the OCC in completing its investigations within sufficient time to allow IAD and the Chief to complete the review process prior to the expiration of the statute of limitation should be discussed and implemented.<sup>256</sup>

### **4. Early Intervention System alerts should be reviewed by captains or command staff.**

When an alert is triggered in the EIS system, that alert and the underlying conduct that gave rise to it should be reviewed and evaluated by captains or command staff within the department who are not the officer's direct supervisors. The reviewing officer must evaluate any patterns of at-risk behaviors or involvement in a disproportionate number of unwarranted high-risk incidents, for example uses of force, complaints, or litigation. If the reviewing officer concludes that the officer has a pattern of unwarranted high-risk activities, the reviewing officer should meet with the officer's superiors and implement a plan of action to address the at-risk behaviors and provide increased support, mentoring, training, and supervision as needed. The review, findings, and plan of action should be documented. The reviewing officer should further be required to re-evaluate the officer at some appropriate time period after the intervention plan has been implemented to assess whether it has been effective.

### **5. SFPD leadership should implement a culture of respect for the Internal Affairs Division.**

The Chief, command staff, and other senior officers must be incentivized to promote a culture of respect for the IAD process. Simply having a culture that recognizes the importance of IAD and respects it can reduce resistance and speed up and make more efficient the disciplinary process. Incentives can include both negative pressure and repercussions where disciplinary processes are not adhered to and positive reinforcement, such as rewarding proper handling of disciplinary matters as part of more senior officers' reviews and promotion evaluations. The current IAD Admin Lieutenant attested that strides have been made to increase the respect given to IAD, but ongoing sensitivity to this issue is important.

### **6. The SFPD should highlight the City's existing whistleblower protections and apply them to people who report all types of SFPD policy violations.**

By city ordinance, no retaliatory action can be taken against an employee for filing certain kinds of complaints with his or her department. There is no SFPD policy that either emphasizes this city ordinance and makes clear that whistleblower protection is a priority for the department, or extends the protections of the ordinance to reporters of all types of violations of SFPD policy. Officers have begun taking the "Not

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<sup>256</sup> Other pertinent findings and recommendations related to OCC are found in the section on External Oversight.

"On My Watch" pledge, where they promise to report inappropriate behavior that they see on their shifts. As a further step, the SFPD should emphasize the protections for whistleblowers that city law already affords and ensure that any officer who reports any violation of department policy is protected and supported. This would help ensure that officers or employees who report wrongdoing are protected against retaliation and feel confident that they would be so protected. Supporting such protection should be a noncontroversial policy measure that will emphasize that effective officer discipline is a priority of the Chief, command staff, and the department as a whole.

### **7. The SFPD should implement a strong policy of disciplining any cover-ups of misconduct.**

Cover-ups of misconduct by SFPD officers or staff must be dealt with appropriately. To the extent an officer covers up inappropriate behavior of themselves or a fellow officer, an IAD investigator covers up actions taken by fellow officers, or a chief takes action to minimize or conceal certain conduct, these actions should be documented, addressed, and subject to discipline by either the SFPD or the Commission, depending on the person accused and recommended discipline. A strong policy of avoiding and addressing cover-ups would set the mandate to avoid such behavior in the future. This tone can be set through the publication of specific guidelines with significant penalties for misconduct that interferes with the disciplinary process. As with protection for whistleblowers, a policy of punishing those who interfere with disciplinary investigations, though not arising from specific instances of such conduct, is an important part of signaling the department's renewed commitment to effective officer discipline.

### **8. The SFPD should employ careful review of prior complaints against the same officer.**

All prior complaints against an officer for similar conduct for at least the prior five years should be reviewed as a matter of course in an investigation. This is a common practice in officer discipline. It is important that both sustained and non-sustained complaints be reviewed to identify patterns or escalating behavior. Currently, repeated and sustained complaints are reportedly considered and generally known to the IAD investigators and lawyers who have served in those positions for extended period of time. However, the consideration of prior allegations and conduct and the weight they are given do not appear to be formalized.

IAD should consider assigning the same investigator to look into repeat offenses by an officer. Having the same investigator reviewing the officer can give the investigator a chance to see potentially problematic behavioral patterns or escalation of problematic behavior. This may necessitate special training focused on teaching investigators how to identify patterns or more typical signs of escalating behavior. These investigators should be regularly evaluated to ensure that officers' problematic behavior is appropriately identified. At a minimum, the investigator of prior complaints should review the report of a later investigation of the same officer in an effort to discern any patterns.

The EIS and the recommended comprehensive tracking system should also be utilized by IAD to track and evaluate the officer's full record for patterns or escalation. It should also be considered in the recommended punishment where prior disciplinary measures have been shown to be ineffective.

### **9. The SFPD should implement civilian direction/management of the Internal Affairs Division.**

Ideally, the implementation of the recommendations set forth above would effectively reintroduce transparency and balance to the disciplinary process. These recommendations would most effectively be implemented by a civilian overseer of IAD.

An appropriate civilian head of officer disciplinary investigations, would be more removed from the influence of officers or other interest groups that might impact fair and consistent disciplinary policies and procedures, and would be a first step to regaining both effectiveness and public trust in the process. A civilian head of officer discipline was implemented indirectly during a period where a civilian was in charge of Risk Management, which oversaw IAD, while IAD lacked its own head. Ideally, the civilian in charge

should have prior police or relevant officer discipline experience. Such prior experience could be relevant to his or her credibility within the department and to understanding the role of an officer, the pressures and problems faced by officers on the job, and the way that officers communicate.

Civilian oversight of IAD may reduce the appearance of improper influence from inside the department or the POA, may bring about a greater level of self-evaluation and commitment to transparency in the process, and could help earn public trust in the officer discipline process.

# Chapter 5:

## External Oversight

### Background

This chapter discusses external oversight of the SFPD. The Panel found that while the provisions for oversight of the SFPD—particularly the Police Commission and the Office of Citizen Complaints—are unique and substantial improvements have been made in recent years, the system is also in need of meaningful improvement and reform, especially in certain key areas. Among other things, no external body regularly audits the effectiveness of the SFPD's policies and procedures or even whether its officers comply with them. The policymaking process for the SFPD is generally reactive and often hamstrung by a lack of resources. The OCC investigates complaints too slowly and, when it does sustain a complaint, the discipline imposed is almost always mild. External oversight bodies and the SFPD must make officer discipline more transparent.

### Existing Oversight Structure

San Francisco has a structure for external oversight of the SFPD that is, in many ways, unique. There are two entities outside of the SFPD that play important roles in overseeing the department: the Police Commission and the OCC. In addition, a third entity external to the SFPD—the Controller's Office—has authority to audit the SFPD, although it rarely does so.

The Police Commission is the body that has ultimate authority over the SFPD in all areas, including oversight, policymaking, and officer discipline. The Chief of Police reports to the Police Commission, which has the power to fire the Chief. There are seven commissioners, four of whom are appointed by the Mayor and three of whom are appointed by the Board of Supervisors. The commissioners are all civilians and serve four-year terms of service.

The Police Commission's current functions fall into two broad categories: discipline and policymaking. The Police Commission is the ultimate arbiter of all major disciplinary matters involving police personnel. These matters may originate either with the OCC (which, as discussed below, investigates complaints lodged by civilians against officers) or with the Internal Affairs Division of the SFPD. In disciplinary matters, the greatest discipline the Chief may impose on his own is a suspension of up to 10 days. For all cases involving greater discipline—that is, involving the possibility of a suspension of more than 10 days up to termination—the Chief may make a recommendation, but only the Police Commission may impose such discipline. The Chief, the OCC, or an officer appealing the Chief's decision, may file a complaint to obtain a disciplinary determination from the Police Commission. The Police Commission also bears the responsibility for setting policies governing all aspects of the SFPD's duties, as reflected most recently in the Police Commission's adoption of a new body-worn camera policy.

The OCC is the entity tasked with investigating complaints filed by members of the public against San Francisco police officers. The OCC Director reports to, and serves at the pleasure of, the Police Commission. The OCC is independent from the SFPD: it is staffed with individuals who are not connected to the SFPD, is housed in a separate physical location, and has a separate budget from the SFPD that is set by the Board of Supervisors. It is empowered by Section 4.127 of the city charter to "receive prompt and full cooperation and assistance from all departments, officers and employees of the City and County.... The director may also request and the Chief of Police shall require the testimony or attendance of any member of the SFPD to carry out the responsibilities of the [OCC]." The OCC has the power to compel officer testimony and subpoena witnesses. After the OCC investigates a complaint, it will either sustain the complaint (in which case the complaint is referred either to the Chief or the Police Commission) or not sustain the complaint (in which case no further disciplinary action is taken). The OCC is also charged with making policy recommendations to the Police Commission.

The City Controller also has oversight power over the SFPD, although it historically has exercised that power only sporadically. The Controller's Office operates as a consultant and auditor to the City and City departments. Its broad purview includes enhancing the performance and efficiency of City departments. The Controller's Office also undertakes regular audits of various City departments, but not the SFPD.

## Findings

### **1. San Francisco's police oversight structure is unique and, in some respects, effective.**

San Francisco is one of only a handful of localities with a civilian Police Commission charged with overseeing its police department, and it has uniquely empowered its Commission with legal authority to enact binding policy for the SFPD and adjudicate officer discipline cases. In many respects, the Police Commission is functioning effectively. Each of the seven current commissioners has an impressive record of public service and a diverse array of experiences: they are prosecutors and public defenders, lawyers from private and public-interest spheres, a social worker, and a youth organization founder. The current Commission is also diverse in terms of its racial, ethnic, and gender composition. The group holds public meetings three times a month at a time and place convenient to the public. These meetings are streamed live, and uploaded and archived on the Internet. It also holds regular meetings in various police districts. As discussed in greater detail below, despite having very little support staff to assist in its work, the Police Commission exercises its legal authority to revise and enact SFPD policy, and to discipline officers who violate those policies.

The OCC has made improvements since its leadership changed in the wake of a scathing audit in 2007,<sup>257</sup> although as detailed further below, more remains to be done. The 2007 audit found a number of troubling findings regarding inadequate case management, poor office morale, and nonexistent investigation procedures, among others. Under the leadership of Director Joyce Hicks, who was appointed to lead the agency after the audit was submitted, the OCC has taken a number of steps to improve its efficacy. It implemented an electronic case tracking system to track the progress of investigations and has developed a detailed procedures manual that covers all aspects of investigations and office procedures.

The OCC has made particularly strong progress in two areas. The first is reporting. The 2007 audit found that the OCC had not published a quarterly report since 2004 or an annual report since 2002. Its reporting practices were not only inadequate, but also violated City Charter § 4.127, which requires quarterly reports from the OCC, and Administrative Code § 2A.30, which requires annual reports from each City department.

<sup>257</sup> See City and County of San Francisco, Office of the Controller – City Services Auditor, *Office of Citizen Complaints: Weak Case Management and Organizational Issues Degrade OCC's Performance* (Jan. 24, 2007), [http://www.octr.lnkml.org/nk/uploadedfiles/controller/reports\\_OCC\\_012407.pdf](http://www.octr.lnkml.org/nk/uploadedfiles/controller/reports_OCC_012407.pdf).

Since then, OCC reporting has been robust and generally timely.<sup>258</sup> The OCC publishes an impressive variety of statistics in these reports, which it posts to its website, allowing the public extensive insight into certain OCC results.

The second area in which the OCC has improved is in the use and quality of its mediation program. The audit found that the OCC could make much better use of its mediation program. The OCC mediated only 22 cases in 2005, or 3 percent of its total. The audit endorsed the mediation coordinator's suggestion that the OCC mediate 75–80 cases per year, or 9 percent of its total. The OCC's current internal goal is to mediate 60 cases per year, and from 2011 through 2014, the OCC mediated an average of 58 cases per year, or about 8 percent of its total cases. A voluntary exit survey of participants indicates that between 2011 and 2014, an average of 88 percent of participants who responded to the OCC's survey were either satisfied or very satisfied with their mediations (the response rate to this survey over this period of time was 56 percent). Witnesses attributed the success of the mediation program in large part to the OCC's mediation coordinator, Donna Salazar.<sup>259</sup>

## **2. No entity regularly audits SFPD operational effectiveness, high-risk activities, or compliance with policies.**

None of San Francisco's police oversight bodies routinely audits the SFPD's operations for efficacy or compliance. Although the Police Commission is charged with primary responsibility for overseeing the SFPD, it does not audit the SFPD. The City Services Auditor within the Controller's Office, which also has authority to audit the SFPD, has not done so in years.<sup>260</sup>

Police commissioners described their primary responsibilities as making policy and disciplining officers. When asked how the Police Commission conducts oversight, commissioners generally indicated that they asked questions of the Chief during weekly meetings; spoke informally to the OCC, command staff, and officers, and analyzed various reports and information. For example, commissioners receive quarterly reports on officer-involved shootings, as well as regular reports on DGOs. Additionally, they have regular discussions regarding the status of disciplinary cases, including whether there are observable trends that might raise concerns. The Police Commission also has a representative on the Firearm Discharge Review Board. These types of oversight activities, however, do not appear to be a central focus of Commission activity. Commissioners generally described their purview as limited to officer discipline and policymaking, and do not view themselves as having an auditor-type oversight function. There is a sense among commissioners that they can only do so much as "volunteers."

Significantly, the Police Commission does not perform any systematic investigations or audits to measure the SFPD's operational effectiveness, review its high-risk activities, or assess the department's compliance with policies issued by the Commission. This is not due to a lack of authority; the City Charter broadly authorizes the Commission to "prescribe and enforce any reasonable rules and regulations that it deems necessary to provide for the efficiency of the Department."<sup>261</sup> Indeed, several commissioners

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<sup>258</sup> Between 2008 and 2011, the OCC published its quarterly reports, on average, 28 days after the end of the quarter and its annual reports, on average, 72 days after the end of the year. Between 2012 and 2015, its quarterly reports were published, on average, 67 days after the end of the quarter and 111 days after the end of the year. When the new director took charge, it also published reports for years that the prior director had neglected.

<sup>259</sup> Some witnesses raised concerns about the fact that once a complaint goes to mediation, the investigation into the complaint is closed and not reopened. There are several safeguards, however, that prevent officers from avoiding discipline through the mediation program. For a complaint to go to mediation (a) both the complainant and the officer have to agree to mediation—if either refuses, then the complaint is investigated; (b) the officer must be eligible for mediation—an officer is ineligible for mediation if she has had a sustained complaint in the past year, has mediated a complaint in the last six months, or has opted for mediation three times in the past two years; and (c) the complaint must be eligible for mediation—certain types of complaints, such as those involving serious violations, substantial injury, sexual or racial slurs, certain use of force allegations, or questions of law such as searches or seizures, are ineligible for mediation.

<sup>260</sup> The OCC does not presently have the authority to conduct regular oversight or audits of the SFPD, nor does it have the resources to do so.

<sup>261</sup> S.F. City Charter, art. VI, § 4.109.

acknowledged having the authority to conduct audits or otherwise measure the SFPD's compliance with policies. However, commissioners stated that they do not regularly initiate audits or investigations and could only recall three piecemeal audits of discrete issues within the department in the last six years.

The Commission also has not requested assistance in conducting audits or investigations of the SFPD from other city departments. The city has an existing, well-funded, and apparently well-functioning audit department in the City Services Auditor, a division of the City Controller's Office. The City Services Auditor's budget is set by City Charter at two-tenths of 1 percent of the entire City Budget, which is supplemented by a percentage of all bond issuances. The director of the City Services Auditor described her budget as "more than enough" to fulfill the auditor division's responsibilities. With 32 full-time, appropriately credentialed auditors, plus contractors for routine audits, the City Services Auditor conducts approximately 70 to 100 substantive audits each year. It develops an annual audit plan, which it modifies as issues arise throughout the year. Robust follow-up procedures, as well as the assistance of the Government Accountability Office subcommittee of the Board of Supervisors in securing department compliance with auditor recommendations, result in a recommendation closure rate of 96 percent.

The City Services Auditor has authority to audit the SFPD, either on the City Services Auditor's own initiative or at the request of the Commission or Chief. The City Services Auditor has not, however, initiated any audits of the SFPD in at least the last five years.<sup>262</sup> For instance, it did not audit the SFPD in the wake of the texting scandal. The Director of the City Services Auditor explained that it did not do so because the Police Commission is the entity charged with overseeing the SFPD. The Police Commission does not regularly interact with the City Services Auditor and has never requested an audit of the SFPD.

In addition to not undertaking general audits or investigations, the Police Commission generally does not take an active role in responding to reports and information it receives as an oversight body. For instance, the Commission appears not to take an active oversight role with respect to the SFPD's Early Intervention System.<sup>263</sup> EIS was designed to identify officers whose performance exhibits at-risk behavior and to assist those officers in correcting those behaviors before disciplinary intervention becomes necessary. DGO 3.19 requires the SFPD to audit the EIS every six months, and to present the results of the audit to the Chief of Police, the OCC and the Police Commission. It also requires the EIS Unit to provide quarterly and annual statistical reports to the Police Commission. While commissioners were generally familiar with EIS, some had not seen reports from the system, and others stated the Commission had not evaluated the program since it was launched to see whether it is working. Some commissioners did report receiving and reviewing quarterly EIS reports, but they used the information primarily to inquire about particular officers and not, apparently, to evaluate broader trends.<sup>264</sup>

The EIS reports, however, reflect some trends that merit further inquiry. For instance, between 2009 and 2014, the SFPD has intervened in only 2 percent of the matters flagged by the system.<sup>265</sup> In the most recent year for which the Panel secured EIS reports (2014), just two of 324 matters flagged by the system resulted in an intervention. Yet by the fourth quarter of that same year, 34 officers each had seven or more "key performance indicators" (KPIs)—which include factors such as use of force, officer-involved shootings,

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<sup>262</sup> The most recent SFPD audit conducted by the City Services Auditor's Audit Branch occurred in May 2010, when the Audit branch evaluated the Department's handling of monetary and property evidence. See Office of the Controller – City Services Auditor, *San Francisco Police Department: The Property Control Unit Can Account for the Monetary Evidence in its Inventory but Needs to Improve Some of Its Controls* (May 20, 2010), [http://sctrcontroller.org/sites/default/files/FileCenter/Documents/843-SFPD\\_2010\\_PCU.pdf](http://sctrcontroller.org/sites/default/files/FileCenter/Documents/843-SFPD_2010_PCU.pdf).

<sup>263</sup> See Chapter 4: Internal Discipline for more on the Early Intervention System.

<sup>264</sup> The extent to which Commissioners have received the reports as required under DGO 3.19 is unclear. When the Panel requested EIS reports from the Police Commission, the Commission responded that it had no documents responsive to that request. Several weeks later, in response to a follow-up inquiry, the Commission confirmed that they did not have any EIS reports at the time of the initial request, but since then had obtained EIS reports from the SFPD. Those reports, which the Commission produced, include only the 2014 quarterly reports and an undated presentation from the SFPD describing EIS.

<sup>265</sup> The available EIS reports do not indicate the type of intervention involved; notably an intervention can involve anything from coaching or counseling, to monitoring the officers, to a referral to a mental health professional, to a temporary or permanent transfer.

OCC and IAD complaints, and civil complaints. Similarly, the data show that while the vast majority of officers generate no or few KPIs, some stations, such as Mission, Bayview, and Southern, have several officers each year with six or more KPIs. The exceptionally low intervention rate raises questions as to whether the system is functioning effectively to provide assistance to officers who could benefit from an intervention or to prevent incidents that may harm the community. Given the important role that a well-functioning EIS could play in helping police officers and preventing problems before they arise, the system deserves more careful oversight.

**3. In the wake of the texting scandal, no oversight body has undertaken any formal investigation or audit of the SFPD to determine whether there is systemic bias within the department.**

Since the texting scandal was reported in early 2015, neither the Police Commission nor any other oversight body has conducted an investigation or audit of the SFPD to gauge whether the bias exhibited in 14 officers' text messages reflects a widespread or systemic problem within the department.

After media reports exposed racist and homophobic text messages involving San Francisco police officers, the Police Chief filed complaints regarding the texting officers with the Police Commission. Until the complaints were filed, the Police Commission did not have jurisdiction over the individual texting officers' disciplinary cases. Once the cases were before the Police Commission, the Commission acted quickly to begin the disciplinary review process for these individual officers, but the matters were promptly stayed at the Police Commission level while the officers litigated statute-of-limitations issues in court. After a judge ruled that the statute of limitations had lapsed, exempting the texting officers from discipline, the City Attorney appealed. Separate and apart from any investigation conducted in the individual discipline cases, however, the Police Commission did not conduct any investigation to determine whether the racist and homophobic text messages exchanged by the officers are a symptom of a widespread or systemic problem within the SFPD.

In April 2016, it came to light that new racist text messages had been exchanged between at least four SFPD officers who were not involved in the original texting scandal. At a Police Commission meeting on April 6, 2016, former Chief Suhr indicated that he filed charges against these officers with the Police Commission in fall 2015. Thus, Commissioners apparently were aware of the second round of racist text messages when they attested during interviews in December 2015 and January 2016 that they had not conducted a broader investigation or independent audit into systemic bias within the SFPD.

When asked why the Police Commission did not perform any broader investigation into potential bias at the SFPD in the wake of the texting scandal, commissioners offered varied responses. One commissioner indicated that after consulting with the Chief and with officers at various levels within the chain of command, he concluded that the sentiments expressed in the text messages were limited to a few officers and not a widespread problem. Other commissioners suggested that a more systematic review might be appropriate, but offered different reasons why such an investigation had not been performed. One commissioner stated that his conversations with community members indicated that there was an insufficient groundswell in public opinion to support a full investigation into whether bias was more widespread. The primary reason commissioners gave for not conducting a broader investigation, however, was that they wanted to preserve their neutrality in anticipation of adjudicating the texting officers' disciplinary cases. Commissioners explained that discipline of law enforcement must be pursued with due process and fundamental fairness and because commissioners serve as finders of fact in officer discipline cases, conducting an investigation into bias might create the appearance of having prejudged the individual officers' cases.

The commissioners' responses do not offer a coherent explanation for why the Police Commission conducted no investigation into potential bias at the SFPD, and the rationale offered most frequently by commissioners is not well supported. Decisions from the U.S. and California Supreme Courts reject the

contention that an administrative agency cannot adjudicate an issue it previously investigated.<sup>266</sup> Absent the “probability of actual bias,” such as where an “adjudicator has a pecuniary interest in the outcome” or “has been the target of personal abuse or criticism from the party before him,” adjudicators are typically accorded “a presumption of honesty and integrity.”<sup>267</sup> Nothing resembling “actual bias” exists by virtue of the Commission investigating whether bias is widespread within the SFPD while also adjudicating whether individual officers should be disciplined for exchanging overtly racist and homophobic text messages. No law supports the notion that such an investigation would give rise to a viable due process objection in the individual discipline cases. Nor does any rule of ethics or any rule governing the Commission’s conduct require commissioners to abstain from such an investigation.<sup>268</sup> And, even if commissioners refrained from conducting an investigation out of an abundance of caution, that would not prevent the commissioners from asking someone else, such as the Controller’s Office, to conduct the audit.

#### **4. Time and resource constraints hamper the Police Commission’s ability to fulfill its many responsibilities.**

The voluntary nature of the Police Commissioner role and a lack of Commission staff constrain commissioners’ abilities to fulfill their duties. Police Commissioners are volunteers who each maintain full-time jobs in addition to their Commission duties. They receive only a small stipend of \$100 per month for their Commission work. Many current and former commissioners reported that serving on the Police Commission could be a full-time job. Between preparation and attendance at regular meetings, discipline hearings outside of those meetings, and other community and SFPD events they attend, commissioners reported logging anywhere between 10 and 30 hours per week on Commission business. The President of the Police Commission may devote between 40 to 50 hours per week on Commission work.

The Police Commission has two staff members who perform mostly scheduling and clerical tasks. An active-duty San Francisco police officer is assigned to the Police Commission as its secretary; this person manages the Police Commission’s agenda, among other tasks. The Commission also has an executive secretary who also performs administrative tasks. Additionally, two city attorneys are assigned to provide legal counsel to the Police Commission; one works on issues related to officer discipline, the other works on policy. The Police Commission does not have a staff person dedicated to policy drafting and analysis, and thus it lacks a counterpart to the OCC’s policy analyst.

While the Commission appears to attract well-qualified commissioners, resource and time limitations constrain its ability to actively oversee the SFPD. Neither the commissioners nor the staff possess the necessary training, experience, or time to conduct meaningful audits or investigations of the SFPD. In some instances, these resource constraints have resulted in the Police Commission’s failure to meaningfully analyze and interpret data given to it by the SFPD. For instance, a commissioner stated that the SFPD was unable to adequately explain racial profiling data in a report requested by the Police Commission in 2015, and the Police Commission was unable to analyze the data for itself because of a lack of resources and expertise. This commissioner also stated that Commission President Suzy Loftus has been asking the SFPD to hire academics and experts to assist the SFPD and Police Commission in interpreting this and other data because the commissioners and SFPD staff lack the necessary expertise to analyze it properly.

<sup>266</sup> *Burrell v. City of L.A.*, 209 Cal. App. 3d 568, 581-82 (1989) (“[A]llowing a single decisionmaker to undertake both the investigative and adjudicative functions in an administrative proceeding does not, by itself, constitute a denial of due process” (citing *Griggs v. Board of Trustees*, 61 Cal.2d 93, 98 (1964)); *Withrow v. Larkin*, 421 U.S. 35, 52 (1975) (“[O]ur cases...offer no support for the bald proposition...that agency members who participate in an investigation are disqualified from adjudicating.”). “Nor is a decisionmaker disqualified simply because he has taken a position, even in public, on a policy issue related to the dispute....” *Burrell*, 209 Cal. App. 3d at 578 (quoting *United States v. Morgan*, 313 U.S. 409, 421 (1941)).

<sup>267</sup> *Withrow*, 421 U.S. at 47.

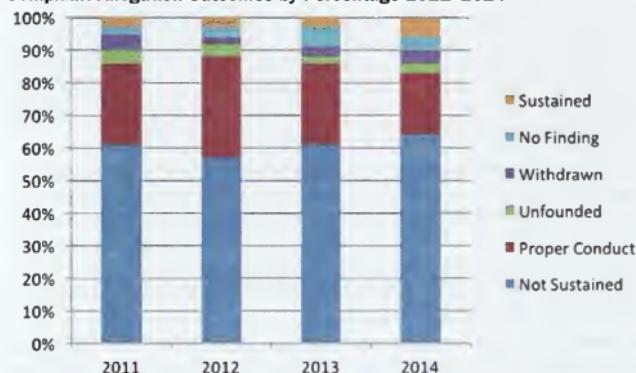
<sup>268</sup> The California Code of Judicial Ethics broadly provides that a judge “shall avoid impropriety and the appearance of impropriety.” Cal. Code of Judicial Ethics, Canon 2 (2015), but the mere “appearance of bias” is insufficient to disqualify an administrative adjudicator under this standard. *Andrews v. Agric. Labor Rel. Bd.*, 28 Cal.3d 781, 793-94 (1981) (en banc). The Advisory Committee Commentary suggests that the same standards applicable to disqualification determinations should guide a determination whether an appearance of impropriety arises under this rule. Cal. Code of Judicial Ethics, Canon 2, advisory cmte. cmt. (2015).

## 5. Complaints made to the Office of Citizen Complaints rarely result in disciplinary consequences, and when they do, the discipline imposed is almost always mild.

Statistics published by the Police Commission and the OCC reveal that officers are rarely disciplined as a result of OCC complaints, and, when they are, the severity of discipline imposed is generally mild.

The OCC sustains a small percentage—well under 10 percent—of complaints. The OCC applies a preponderance of the evidence standard when assessing whether to sustain a complaint. A review of OCC openness reports over the last three years indicates that the OCC sustains very few complaints in “he said/she said” situations between complainants and officers. For most sustained complaints, there was either irrefutable documentary evidence of the violation (such as missing paperwork), testimony from multiple independent witnesses, or an admission by the officer that the complained-of conduct occurred. The OCC’s annual reports indicate that the average rate of “not sustained” allegations was 61 percent between 2011 and 2014, making it “[b]y far the most frequent finding,” followed by “proper conduct.”<sup>269</sup>

**Complaint Allegation Outcomes by Percentage 2011–2014<sup>270</sup>**



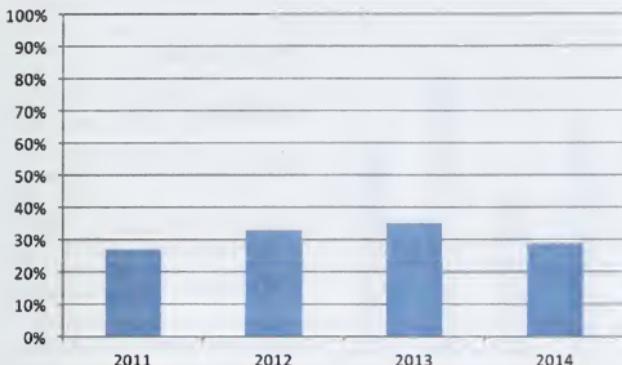
Also notable are the grounds on which OCC complaints are sustained. First, failure to collect traffic stop data accounts for an average of 30 percent of all sustained complaints between 2011 and 2014. These allegations are typically not raised by complainants, but rather are added by OCC investigators during the course of investigating a complaint alleging a separate act related to the traffic stop. While it is important that officers follow department policy and be held accountable for these failures (particularly given the importance of such data in evaluating potential bias in policing), including such cases in the same metric as complaints filed by citizens may create the misleading impression that the rate of sustained complaints made by citizens is higher than it actually is.

<sup>269</sup> A finding of “proper conduct” means that the actions occurred, but were “justified, lawful, and proper.” DGO 2.04(III)(A)(3)(c).

“Proper conduct” is often a technical determination of whether the conduct alleged is permissible under the DGOs.

<sup>270</sup> Source: OCC Annual Reports 2011–2014. The OCC reports two different sustained rates: the percentage of complaints where at least one allegation is sustained, and the percentage of all allegations that are sustained. Some complaints contain more than one allegation, so the number of allegations is higher than the number of complaints. The OCC only reports the dispositions in the graph on an allegation-by-allegation basis, not a complaint-by-complaint basis. The sustained complaint rates for the years covered by the graph are 7.0 percent in 2011, 6.0 percent in 2012, 6.0 percent in 2013, and 8.2 percent in 2014.

### Failure to Collect Traffic Stop Data as a Percentage of All Sustained Complaints 2011–2014<sup>271</sup>



Second, the OCC has not sustained a single complaint of biased policing in the last eight years, although more than 211 such complaints have been filed since 2012, when the OCC began reporting the number of such complaints in its annual report.<sup>272</sup> Witnesses gave several possible reasons for this. Many witnesses lamented that proving bias is very difficult unless there is tangible evidence that the officer involved explicitly cited race as a factor motivating his or her actions. Other witnesses noted that discipline investigations often narrowly focus on the facts of the individual case and ignore patterns of behavior. Information walls between agencies (as discussed further below) exacerbate this issue. The OCC is not unique in its failure to sustain bias complaints: the Inspector General of the LAPD found that out of the 1,356 biased policing allegations closed between 2012 and 2014, none were sustained.<sup>273</sup>

In the rare case that an OCC complaint is sustained, the discipline imposed is typically mild. As demonstrated by the graph below, the most common disciplinary outcome in sustained OCC cases—by far—is an admonishment. Admonishments have been handed out in approximately 60 percent to 80 percent of all sustained OCC cases over the last six years. An admonishment “does not constitute formal discipline. It is a warning only and not a punitive action.”<sup>274</sup>

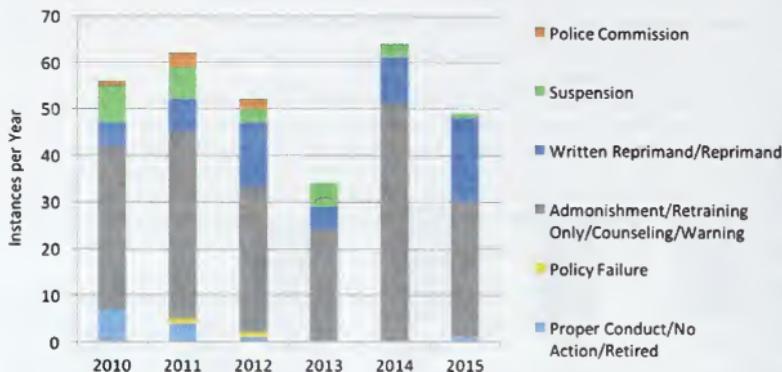
<sup>271</sup> Source: OCC Annual Reports 2011–2014.

<sup>272</sup> The OCC’s 2011 annual report categorized complaint 416-10, sustained in May 2011, as one involving “racially biased policing,” but that categorization appears erroneous. According to the OCC openness report from May 2011, the allegations of bias based on the driver’s ethnicity were not sustained, and the OCC explicitly found that there was “insufficient evidence to prove or disprove that the officers’ policing actions at the station were biased.” See *id.* at 58, [http://s3gov.org/occ\\_cms/2011/annual\\_report\\_of\\_Citizen\\_Complaints/OCC\\_05\\_11\\_Openness.pdf](http://s3gov.org/occ_cms/2011/annual_report_of_Citizen_Complaints/OCC_05_11_Openness.pdf). The portion of the complaint that was sustained involved failure to follow San Francisco’s “sanctuary city” policy. *id.* at 59.

<sup>273</sup> Office of the Inspector General, Los Angeles Police Commission, *Review of Biased Policing Complaints* (Dec. 15, 2015) at 4, [https://medialaw.com/\\_ugd/b2dd23\\_e0f1e70608c994c40a0bf9233ae0175af.pdf](https://medialaw.com/_ugd/b2dd23_e0f1e70608c994c40a0bf9233ae0175af.pdf).

<sup>274</sup> SFPD Department General Order 2.07(I)(B)(1), [http://sanfranciscopolice.org/sites/default/files/Fac\\_Center/DGOs/DO\\_2.07.pdf](http://sanfranciscopolice.org/sites/default/files/Fac_Center/DGOs/DO_2.07.pdf).

### Disciplinary Outcomes 2010–2015 (OCC Only)<sup>275</sup>



It also bears special emphasis that neither the Chief nor the Director of the OCC has sent a discipline case that originated from a citizen's complaint to the Police Commission since 2012. All of the disciplinary cases that have been sent to the Police Commission from 2013 through 2015 originated in IAD. During this same period, only nine OCC complaints have resulted in a suspension by the Chief, and all such suspensions were for 10 days or fewer. That means that of the more than 1,920 OCC complaints closed and 147 OCC complaints where discipline was imposed over this time period, none were determined by the Chief or the OCC Director to raise issues that warranted serious discipline. While each individual case is unique and it is possible that there are reasonable explanations for why no OCC case has been referred to the Commission between 2012 and 2015, these statistics are troubling and raise questions about whether officers are being held accountable to the citizens they serve.

Over the past five years, the OCC has declined to exercise two of its powers that are designed to vindicate the rights of aggrieved citizens. First, the OCC is empowered by City Charter § 4.127 to file charges directly with the Police Commission if the Chief of Police disagrees with the OCC's determination that a complaint ought to be sustained, or if the OCC does not deem the punishment meted out by the Chief to be sufficient. The OCC never filed charges directly with the Police Commission during the time that Greg Suhr was Chief of Police. Former Chief Suhr only disagreed with the recommendation of the Director of the OCC in 5 percent of cases over the past five years. These facts, coupled with the extremely low incidence of sustained complaints recommended for serious discipline, resonate with statements of witnesses who view the OCC as taking a "conservative" approach to pursuing citizen complaints.

A second unused OCC mechanism is evidentiary hearings. Charter § 4.127 provides that the Director of the OCC "shall schedule hearings before hearing officers when such is requested by the complainant or a member of the department" and the hearing would "facilitate the fact-finding process." The time when complainants and officers request hearings is currently after the OCC issues its determination letters, which is after the fact-finding process has run most of its course. While both complainants and officers have requested hearings, none have been granted since the current OCC Director took over.<sup>276</sup>

<sup>275</sup> Source: Police Commission, see <http://sanfranciscopolice.org/occ-discipline-issues-unit>. The OCC began publishing similar information in narrative form in its annual and quarterly reports in 2012. The OCC's data persistently varies in small but noticeable ways from the data published by the Commission. This report uses the Commission's data—which tends to underestimate the number of officers disciplined marginally—because it covers a longer time period. The Panel encourages the Police Commission and the OCC to work together to ensure that the data each agency publishes is uniform and accurate.

<sup>276</sup> Complainants and officers may also request a "Case Review," where the investigator responsible for the complaint explains the basis for the OCC's determination in a confidential setting. These occur after the fact-finding process has run its course at the OCC.

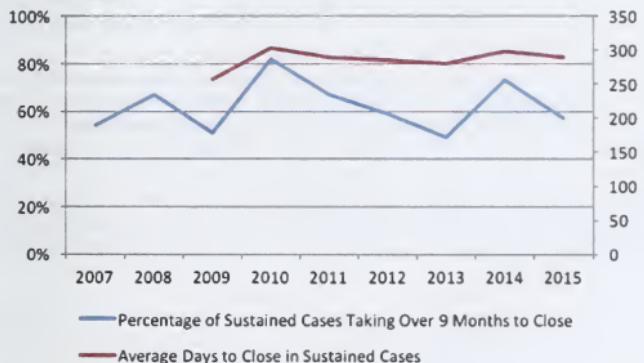
Witnesses stated that the reason that hearing requests usually are denied are because the requests do not sufficiently articulate the reasons for requesting a hearing, and because the OCC lacks the resources to conduct them. Because many OCC cases turn on credibility determinations, it seems likely that an evidentiary hearing would assist OCC's fact-finding process. The OCC's failure to use this process suggests the OCC is not completing investigations in the robust manner contemplated by the charter.

## **6. The OCC has failed to meet its own goals for completing timely investigations and suffers from a lack of resources.**

The OCC was last audited in 2007. One of the principal findings of that audit was that the OCC was not investigating and closing cases in a timely manner. City Charter § 4.127 requires the OCC to "use its best efforts to conclude investigations . . . within nine (9) months of receipt." This provision exists to provide sufficient time for the Police Chief to evaluate sustained complaints and initiate discipline before the one year statute of limitations imposed by the Public Safety Officers Procedural Bill of Rights expires.<sup>277</sup> The 2007 audit found that 152 of 286 cases sustained between 2003 and 2006, or 53 percent, took longer than nine months to close.

Further, in all but two of the last nine years, the percentage of sustained cases closed within nine months has been worse than 53 percent—sometimes dramatically so. As demonstrated by the below graph, the percentage of sustained cases that have taken more than nine months to close has ranged from 49 percent to 82 percent. The average days to close a sustained case over the last five years has been 286, which exceeds nine months. Despite performance deterioration in this critically important area, the OCC failed to meet the statute of limitations in only one case in the last five years.

**Time to Close Sustained Complaints\* 2007 through Sept 2015<sup>278</sup>**



\*Note: Average days to close in sustained cases were not available for 2007 and 2008.

Witnesses generally cited the OCC's resource constraints as the reason that investigations are not completed within nine months. As set by the Board of Supervisors, the city budgets for 2014/2015 and 2015/2016 provide the OCC \$5.1 million each year for 34.75 employees. The OCC has allocated 17 positions for line investigators and three for senior investigators. City Charter § 4.127 sets a floor on the number of OCC investigators at one investigator for every 150 sworn officers. In recent years, however, the

<sup>277</sup> See Cal. Gov't Code § 3304(a).

<sup>278</sup> Source: OCC Annual Reports 2008-2014; OCC First, Second, and Third Quarter Reports for 2015.

OCC has not filled all of its investigator slots. In 2014, for example, a "mandated vacancy factor and step adjustments" meant that the OCC had the budget to fill only 15 of its investigator positions. Line and senior investigators have taken extended leaves of absence (which the Director represented are permitted by civil service rules) in recent years, further crippling OCC staffing levels.

The OCC's reduced staffing levels have impaired its ability to meet the 2007 audit's recommendation of 16 cases per investigator. At the time of the audit, the average number of cases per investigator was 32. Last year, that number stood at 27, and in the last five years, the average caseload has been 23. Director Hicks stated that if the City were to bestow the OCC with additional resources, she would use them to increase the number of investigators on staff, which the OCC has consistently requested.<sup>279</sup>

The OCC's resource constraints impact its function beyond investigator staffing levels. The OCC has only one car that it makes available to its investigators. Much of the technology that the agency and investigators use is out of date, and many aspects of complaint files are not digitized. The OCC has only one information technology employee. As a result, certain portions of the OCC's website are not updated timely (most noticeably, the portion of the OCC's website that lists policy recommendations has not been updated since 2008). The OCC has also made some questionable decisions about how it uses its limited resources. For example, the OCC purchased iPods several years ago for recording purposes, but has not used any of them.

## **7. The Police Commission is currently managing its docket of disciplinary cases and imposing serious discipline, but the lack of available information makes it difficult to evaluate whether the Commission is acting consistently and appropriately in all instances.**

The current Police Commission is managing its docket of disciplinary cases efficiently and imposing serious discipline. The limited information that exists regarding Commission disciplinary matters raises some questions regarding the consistency and appropriateness of some of the Police Commission's disciplinary outcomes, and does not allow a definitive conclusion on those questions.

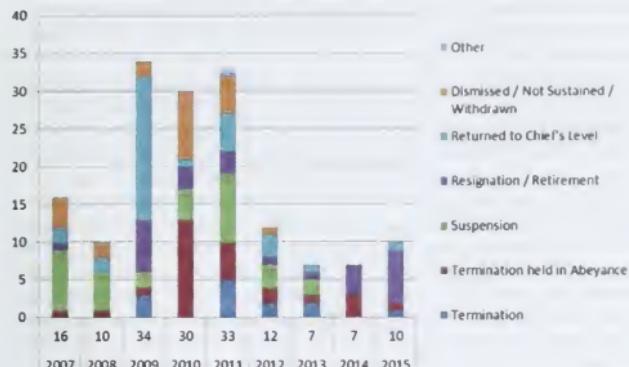
San Francisco vests its Police Commission with exclusive power to impose discipline involving a suspension of greater than 10 days. This means that the Police Commission, and not the Chief, has the sole authority to terminate officers. This discipline structure is unique among California's major metropolitan police departments, because most other departments give their police chief the exclusive authority to discipline officers.

The Commission's Veronese Reports show the DGO charges and disciplinary outcomes associated with each case of officer discipline resolved by the Commission every quarter. The number of cases resolved by the Commission between 2007 and 2015, as well as the disciplinary outcomes associated with the cases, is shown below.

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<sup>279</sup> On January 26, 2016, Supervisor Malia Cohen introduced a measure that would permit the OCC to investigate all officer-involved shootings, regardless of whether a complaint is filed. According to Director Hicks, citizen complaints have been filed in only eight of 35 officer-involved shootings in the past five years. See Michael Barba, *Scrutiny of Officer-Involved Shootings May Increase*, S.F. Examiner, Jan. 27, 2016, <http://www.sfexaminer.com/scrutiny-of-officer-involved-shootings-may-increase>. As investigations of officer-involved shootings consume more resources than the average OCC case, it is unclear how the OCC would fulfill this duty without additional investigators.

### Police Commission Disciplinary Outcomes<sup>280</sup>



Police Commissioners reported having an "overwhelming" backlog of disciplinary cases several years ago. Indeed, as the above graph shows, the Police Commission resolved 30 cases or more in each year between 2009 and 2011. Commissioners stated that, during this time period, scheduling hearings on motions and reading transcripts and case files consumed substantial amounts of time, leaving little time for policymaking and other Commission responsibilities. It is notable that, during the time when the Commission was trying to clear its backlog, significantly higher numbers of cases were dismissed/not sustained/withdrawn or were returned to the Chief compared with more recent years when the Commission has not been backlogged.

Current commissioners attested that the backlog of cases has been eliminated, and they now move cases along more quickly. The Police Commission adopted a resolution in 2007 governing the timing for the assignment of cases and conducting hearings. Commissioners report that they are generally adhering to the scheduling resolution. The Commission secretary also maintains an internal document tracking the status of each case. The Police Commission currently has a total of about 25 cases pending before it, with each Commissioner responsible for anywhere between one and seven cases each. None of the cases appear to have been filed prior to 2013. Current commissioners attributed delays in resolving pending cases to factors beyond their control, such as when a matter is stayed during the pendency of parallel criminal proceedings.

The data reflect that the Police Commission has imposed serious discipline, such as termination, suspension with termination held in abeyance,<sup>281</sup> or suspension, in many cases. A significant number of cases also result in officer resignation or retirement, which may be interpreted as an indication that officers understand the likely alternative will be termination. Resignation or retirement accounted for four out of seven (or 57 percent) of all case dispositions in 2014, and seven out of 10 (or 70 percent) of all case dispositions in 2015. There was one officer termination between 2014 and 2015.

One notable outcome involves cases that are "returned to Chief's level." While the Veronese Report itself gives no indication what this designation means, commissioners reported that cases are returned to the Chief's level when the Commission determines that they merit 10 days of suspension or less. Almost half of the 34 cases that the Commission adjudicated in 2009 were returned to the Chief's level. This appears to have been an aberration: both before and after 2009, the number of cases returned to the

<sup>280</sup> Source: Veronese Reports 2007-2015.

<sup>281</sup> A former Commissioner explained that "termination held in abeyance" means that the Police Commission can decide, as part of its discipline imposed, to terminate an officer if he or she does not follow certain terms during a specific time period.

Chief was much lower, with no cases returned to the Chief in 2014 and one of the 10 cases decided in 2015 returned. Because the Veronese Reports contain little detail about each case, it is difficult to judge whether these outcomes were appropriate.

Commissioners uniformly indicated that officers who lie, cheat, steal, or otherwise demonstrate moral turpitude suggesting they are unfit for the position will automatically be removed from the force. They also stated that allegations of bias are taken very seriously. Although the limited facts contained in the Veronese Reports make it difficult to test these assertions, the available information raises questions about whether the Police Commission has consistently followed its stated no-tolerance policy. For example, in a case resolved in 2012, an officer's case was "returned to Chief's level" where the officer was charged with "[b]eing untruthful in the course of an EEO investigation; being untruthful in the course of an IAD investigation."<sup>282</sup> In two cases resolved by the Police Commission in 2011, officers charged with "harassment on the basis of an individual's or group's race, color, national origin, ethnicity" received 360-day suspensions.<sup>283</sup> In two cases resolved in 2010, officers charged with "harassment on the basis of an individual's or group's race, color, national origin, ethnicity" received termination held in abeyance for five years; 10-day suspension; and participation in the department's alcohol abuse program for five years.<sup>284</sup> Although the Panel does not have the benefit of a full factual record (requests to the Commission for disciplinary files redacted of officer-identifying information were denied on the ground that the information was protected by existing law), these cases indicate that officers who were charged with lying or racial harassment have in some instances been permitted to remain on the force.

That is not to say that the Commission has failed to terminate officers who engaged in lying, cheating, stealing, or other similar behaviors. The Commission does visit serious disciplinary consequences upon officers charged with such misconduct. For instance, in 2014, an officer was terminated for "[m]aintaining an inappropriate relationship with a minor student while serving as coach" and "[f]ailing to be fully forthcoming in official interviews."<sup>285</sup> Another was terminated in 2011 for, among other things, "writing of inaccurate report; misrepresentation of the truth."<sup>286</sup> In two other cases, officers were terminated after being caught cheating ("[e]ngaging in a pattern of submitting improper court compensation requests"<sup>287</sup>) or stealing ("committing acts of theft from Fry's Electronics"<sup>288</sup>).

Unfortunately, the paucity of detail in the Veronese Reports makes it difficult to draw any firm conclusions about whether the Commission is consistently imposing appropriate disciplinary outcomes.

## **8. State law imposes significant restrictions on the transparency of officer discipline.**

California law imposes significant restrictions on the public disclosure of information relating to officer discipline. Penal Code § 832.7 provides that all "[p]eace officer or custodial officer personnel records," as well as "records maintained by any state or local agency pursuant to Section 832.5, or information obtained from those records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code" (section 832.5 governs complaints by members of the public against law enforcement personnel).<sup>289</sup> In *Copley Press, Inc. v. Superior Court*, 39 Cal. 4th 1272 (2006), the California Supreme Court interpreted these provisions to mean that civil service commission records (such as records of the San Francisco Police Commission) pertaining to disciplinary proceedings against peace officers are confidential and exempt from public disclosure.

282 Source: Veronese Report, 3Q 2012, case no. IAD 2011-0110.

283 Source: Veronese Report, 1Q 2011, case nos. JCT C06-187; JCT C06-186.

284 Source: Veronese Report, 1Q 2010, case nos. JCT C06-184; JCT C06-185.

285 Source: Veronese Report, 1Q 2013, case no. JWA C11-194; IAD 2010-0210.

286 Source: Veronese Report, 1Q 2011, case no. IVF C09-143.

287 Source: Veronese Report, 2Q 2012, case no. ALW C11-211.

288 Source: Veronese Report, 4Q 2013, case no. ALW IAD 2012-0619.

289 These provisions of the Penal Code are separate from the Public Safety Officers Procedural Bill of Rights, Cal. Gov't Code § 3300 et seq., which provide additional procedural protections for police officers facing disciplinary action.

As a practical matter, these Penal Code provisions, as they have been interpreted, make it extremely difficult for the public to obtain details about specific pending police disciplinary matters. The law prevents disciplinary hearings from being open to the public; disciplinary hearings must instead be held in closed session unless the officer consents to a public hearing. Disciplinary reports also cannot disclose any officer name or identifying information, and files created during disciplinary proceedings are sealed and generally are exempt from public records requests. Even an individual whose complaint initiated a disciplinary process is not entitled under current law to obtain a copy of the OCC's final report and recommendation, which constitute personnel records within the meaning of the Penal Code.<sup>290</sup>

Existing law also imposes significant restrictions on the information that the OCC and Police Commission may publish. Although these civilian oversight bodies may (and to some extent do) publish aggregated statistics regarding the types and outcomes of complaints, as well as short case summaries, the Penal Code § 832.7, subd. (c) limits the OCC and the Police Commission to publishing "data regarding the number, type, or disposition of complaints...if that information is in a form which does not identify the individuals involved." This precludes any public effort to determine the number or type of complaints filed against specific named officers. For instance, the OCC has stated that it has received complaints related to the texting scandal and the Mario Woods shooting, but it cannot disclose any details to the public because of these legal restrictions. Although the OCC publishes certain limited information regarding the facts of the cases it investigates, it is impossible to determine whether any particular officer has had multiple complaints filed against him or her.

In February 2016, legislation was introduced in the California State Senate that would provide for greater public access to police disciplinary records in certain cases, and would also allow individuals who file complaints access to more detailed information regarding the outcome of disciplinary proceedings stemming from their complaints. This bill did not make it through the committee process.<sup>291</sup>

## **9. San Francisco is not as transparent about officer discipline as existing confidentiality laws permit, or as its own rules require.**

Notwithstanding these significant legal obstacles to transparency in officer discipline, existing law does permit some information about officer discipline to be disclosed to the public. While San Francisco provides a substantial amount of information to the public about OCC complaints, it falls far short of what the law permits with respect to the disciplinary process as a whole. In some cases, it also falls short of its own self-imposed requirements.

First, information about the disciplinary matters that come before the Police Commission is not available to the public to the full extent permitted by law. Unlike the OCC, the Police Commission publishes no aggregated or statistical information about the disciplinary matters it handles, which it could do. While the Police Commission creates Veronese Reports, which describe the charges, the underlying facts, and the ultimate disposition of officer discipline cases at the Police Commission without disclosing the officer's identity, these reports are not readily available even though California law expressly permits their public dissemination.<sup>292</sup> The Veronese Reports, obtained through a Public Records Act request, are occasionally discussed during Police Commission meetings, but until mid-May 2016, they were not readily accessible to the public otherwise. While commissioners expressed that these reports should be available on the Police Commission's website, the Panel was unable to locate them on the website or elsewhere online until the Police Commission started posting them in mid-May 2016. Requests to the Police Commission for guidance on where to locate them publicly were not answered when made.

<sup>290</sup> See Cal. Penal Code §§ 832.5(b); 832.7 (a), (c); *S.F. Police Officers Ass'n v. Superior Court*, 202 Cal.App.3d 183, 192 (1988); Office of the Attorney General, State of Cal., Op. No. 89-1103 (Apr. 5, 1990), 73 Ops. Cal. Atty. Gen. 90, 1990 WL 484763.

<sup>291</sup> Alexei Koseff, *California Bills Fail to Advance on Police Records, Body Camera Funding*, Sacramento Bee (May 27, 2016) <http://www.sacbee.com/news/politics-government/capitol-alert/article80424102.html>.

<sup>292</sup> Cal. Penal Code § 832.7(c).

Second, very little information is provided to the public about disciplinary matters originating with the SFPD's IAD, rather than in the OCC, even though the law does not impose a higher standard of confidentiality for IAD matters. The only information available for these matters is the discipline imposed by the Chief of Police for sustained IAD charges, which are given a code corresponding to the type of offense charged. No information about the facts underlying the allegations or charges in IAD-originating cases is published online. The law permits significantly more detail about IAD-originating matters to be disclosed to the public, including the number and types of charges investigated; the number and types of charges referred to the Chief for discipline; the number of days to close a case; and anonymized details of the facts, charges, and discipline in sustained IAD matters among other things. Because the vast majority of cases that get referred to the Police Commission for serious discipline originate with IAD, the lack of information about matters originating with IAD significantly limits insight into the disciplinary process as a whole. Thus, while the OCC statistics discussed above shed some light on the disciplinary process, they reveal only a small part of the overall picture.

Third, throughout the system, little or no information is published regarding complaints containing allegations of bias in particular. While the OCC already publishes (in a useful and readily accessible form) a substantial amount of information about the complaints it handles, information regarding complaints of bias is relatively opaque in OCC reports—and virtually non-existent with respect to disciplinary matters originating in the IAD. Complaints regarding bias are not specifically tracked and listed as a separate category in OCC reports. OCC tracks a separate category for complaints regarding racial slurs, but not all (or even most) allegations of bias involve racial slurs and other bias complaints are included in broad catch-all categories such as "conduct unbecoming of an officer." Recent OCC Annual Reports include a narrative discussion of the number of complaints alleging bias, but do not describe how "bias" is defined or otherwise explain how this statistic was derived.

Fourth, information from all of these sources (the Police Commission, the IAD, the Chief, and the OCC) is not presented to the public in a unified fashion or in a single, easily accessible place. It is not currently possible to track particular cases as they make their way up the disciplinary ladder from the OCC or IAD to the Chief to the Police Commission. While the factual allegations and charges for all sustained OCC complaints are available through OCC published reports, and the Chief's punishment imposed for sustained complaints originating in the OCC are available through the Police Commission's published reports, there is no report showing this information side-by-side, such that the public can compare the sustained findings against the discipline imposed. It is technically possible to link the factual allegations, charges, and OCC findings with the Chief's and/or Police Commission's ultimate disposition using the complaint filing date, but this can only be done through laborious effort and by comparing two or more separate reports. It is not realistic to expect members of the public to undertake this level of effort.

Finally, information about officer discipline is not published in a timely manner. In order to "maintain public confidence in the Department's accountability systems," the Chief is required to report monthly to the Police Commission on his decisions regarding all sustained OCC and IAD complaints, and to publish those reports on the SFPD's website within 10 days of issuance.<sup>293</sup> At the beginning of the Panel's investigation in August 2015, the most recent Chief's report reflecting his decisions on sustained complaints referred to him by OCC was dated February 2014. As of April 2016, the SFPD website was still out of date: the most recent report on the Chief's decisions for sustained OCC complaints was dated November 2015, and the most recent report on the Chief's decisions for sustained IAD complaints was dated January 2012.<sup>294</sup> Likewise, the OCC has not been timely in publishing its reports on the OCC's website, despite being required to do so within 10 days of each reports' issuance.<sup>295</sup> At the beginning of

<sup>293</sup> See Police Commission Resolution No. 97-04 (2004).

<sup>294</sup> During the course of our investigation, the Police Commission published on its website reports on Chief's decisions for sustained IAD complaints through 2015. In February 2016, we were able to access and use these reports in our analysis of officer discipline. However, when we attempted to access the reports several weeks later in March 2016, the reports no longer appeared on the website. The reports reappeared on the website by May 2016.

<sup>295</sup> Police Commission Resolution No. 97-04 (2004).

the investigation in August 2015, the most recent OCC report available on the OCC's website was the 2014 Annual Report. The OCC reports for the first and second quarter of 2015 had not been published. The most recent report available on the OCC's website as of April 2016 was the report for the third quarter of 2015.

## **10. Lack of transparency surrounding officer discipline makes it difficult to determine whether disciplinary outcomes are fair and appropriate.**

A related problem to the above issues is that the lack of transparency makes it difficult to assess the soundness and consistency of disciplinary outcomes. Although the Police Commission's internal tracking document indicates, as discussed above, that the Police Commission is managing its current disciplinary case load in a reasonably timely fashion, it is impossible to discern from these reports or others whether the most serious discipline cases are being brought to the Police Commission.

There is no indication that the Police Commission undertakes any effort to determine whether the Chief is appropriately imposing discipline and referring cases to the Police Commission. Additionally, while Veronese Reports indicate that the Police Commission is imposing serious discipline in certain cases of officer misconduct, as discussed above, it is difficult to determine from publicly available documents whether the discipline is appropriate in light of the misconduct that occurred.

Moreover, the Police Commission does not rely on any formal, published guidelines or standards for imposing discipline. While written guidelines exist, the Police Commission does not maintain a copy. These guidelines are not published on the Police Commission's website and were not produced in response to a Public Records Act request to the Police Commission. Instead, the SFPD produced a copy of the guidelines in response to a Public Records Act request. These written guidelines appear not to have been updated since 1994.

Some commissioners were unaware that written guidelines for discipline existed. Other former and current commissioners were aware of the guidelines, but reported that the Police Commission does not follow these guidelines when making disciplinary decisions. The Police Commission relies instead on informal "rules" and "precedent" from prior cases to determine appropriate outcomes. Additionally, because of barriers the Panel faced in securing police officer interviews,<sup>296</sup> it was unable to gauge whether members of the SFPD have the same expectations for discipline as commissioners.

For these reasons, the Panel does not have a basis to assess whether San Francisco's unique system for officer discipline produces fair and appropriate disciplinary outcomes.<sup>297</sup>

## **11. Community members report that the lack of information about the outcomes of OCC complaints and officer disciplinary proceedings generates mistrust of the OCC and the SFPD, and a perception that the disciplinary process is ineffective.**

During the investigatory process, the Panel met with numerous community leaders and residents. The prevailing view from community members interviewed is that the OCC, while well-intentioned, is not effective in resolving citizen complaints about the SFPD in a satisfactory way. There appear to be several reasons for this perception. Many people expressed frustration that the OCC's investigations take a long time to resolve—sometimes up to a year. Both OCC complainants and community members familiar with the OCC's investigatory process reported that complainants generally are not kept informed about the status of their complaint during the OCC's investigation, creating a perception of inaction and uncertainty. Moreover, even at the conclusion of an investigation, little information is provided to complainants: letters

<sup>296</sup> See Introduction at page 7 for more detail.

<sup>297</sup> One perceived benefit to the current system is that the power to terminate or seriously discipline police officers rests with civilian leaders who are outside of the SFPD and may be more likely to have community interests in mind. However, this system has been criticized for being too slow, and for undermining the authority and accountability of the Chief for his own Department. Some interviewees proposed giving the Chief more power to discipline officers, including the power to terminate. The Panel lacks sufficient information to evaluate whether such a proposal would be appropriate, especially absent robust audit procedures, which currently do not exist. See Chapter 4: Internal Discipline for further discussion.

sent to them simply say that the complaint has either been sustained or not been sustained, without any explanation. The letters do not provide the case summary that is later published in the OCC's openness reports. This lack of communication may prevent complainants from learning about how thoroughly the OCC investigates complaints. There also appears to be a widespread perception that the OCC is not truly independent of the SFPD, and that OCC investigators are not willing to question the credibility of SFPD witnesses.

**12. The current Police Commission has adopted a collaborative and inclusive process for making and revising policy, but the inclusiveness of the policymaking process is limited by collective bargaining rules that give substantial power to the POA relative to other stakeholders.**

Over the past few years, the Police Commission's policymaking strategy has evolved to build significant stakeholder input and community-engagement opportunities into the policymaking process. While the Commission has attempted to engage a variety of stakeholders, the POA continues to have power in the policymaking process that is disproportionate to that of other stakeholders. Under relevant MOUs and collective bargaining laws, the POA is entitled to a meet-and-confer process with regard to proposed changes to DGOs, and, if meet-and-confer efforts fail to produce a negotiated resolution, the POA may pursue arbitration. Because the arbitration process is not time-limited and can take months to run its course, these so-called "impasse procedures" give the POA significant bargaining power, especially in circumstances where there is a sense of urgency around making policy revisions.

The body-worn camera policy adopted by the Police Commission on June 1, 2016, provides a recent example of the POA's disproportionate bargaining power. When the Police Commission began the process of drafting a new department policy on BWCs, it created a working group comprising stakeholders from the District Attorneys' Office, the Public Defenders' Office, the OCC, the POA, the San Francisco Bar Association, and others, to draft the new policy and identify issues for the Police Commission to resolve. Once a draft was completed, the commissioners asked for additional input from the community. With extensive stakeholder and community member feedback in hand, the commissioners discussed and approved the draft policy. That policy reflected a compromise on a number of issues, the most heavily debated of which was the question of whether officers would have an opportunity to review footage from BWCs before writing their reports. The compromise adopted by the Commission was that, in cases of officer-involved shootings, in-custody deaths, or criminal matters, officers could preview such footage only at the discretion of the Police Chief.

After this compromise was reached, the Commission, through the city negotiator, then engaged in the required meet-and-confer process with the POA. The outcome of that process was a compromise different from the one struck by the various stakeholder groups: in cases of officer-involved shootings, in-custody deaths, or matters where an officer may be subject to criminal liability, the officer must provide an initial brief statement about the incident but then has an opportunity to review BWC footage with an attorney before being interviewed fully. The Police Commission approved this change to the policy, over dissent from two commissioners. The majority view, however, was that further delay to accommodate additional feedback or to arbitrate the issue, after over a year of negotiation, would be unacceptable.

The Police Commission is using a similar process to re-evaluate the SFPD's Use-of-Force Policy in the wake of the Mario Woods shooting.<sup>298</sup> While this report was being drafted, the Police Commission held several community meetings to solicit feedback on the policy and invited multiple community groups—including the ACLU Coalition on Homelessness—and the Panel's Use of Force and Officer-Involved Shootings Working Group to join the Commission's working group. As with the BWC policy, the POA is involved in ongoing stakeholder discussions about changes to the use-of-force policy, and has a right to the same meet-and-confer process.

298 Members of the Blue Ribbon Panel's Use of Force and Officer-Involved Shootings working groups are participating in the Commission's working group on the Use of Force Policy.

The current Commission has made meaningful efforts to involve relevant stakeholders in the policymaking process, within the context of the collective bargaining rights held by the POA. Commissioners expressed that early and ongoing feedback from relevant stakeholders and community members creates opportunities for constructive dialogue, contributes to consensus-building, and produces better decision making more likely to reflect best practices. Because policy changes may affect the working conditions of POA members, the POA is a necessary and important voice in this process. The ability to delay important policy changes through the meet-and-confer process and impasse procedures, however, gives the POA disproportionate leverage in the policymaking process relative to other stakeholders and has produced outcomes that depart from policy recommendations built through the Commission's community-engagement efforts. As one commissioner noted in connection with the BWC policy, such departures may differ too much from compromises reached with multiple stakeholders, chill future participation in the policymaking process, and ultimately diminish community and stakeholder buy-in for the resulting policy.

### **13. Policy priority-setting at the Police Commission is reactive and the ongoing process of revising existing policies can be slow.**

Current and former commissioners described the process of identifying policies for revision or adoption as largely reactive and ad hoc. Most policy issues are not identified and initiated by commissioners; commissioners explained that their policy agenda is largely set for them by whatever is happening in the community. Although the OCC regularly submits policy recommendations in its quarterly, annual, and Sparks reports, commissioners indicated that the Police Commission has been unable to discuss these recommendations in any length because it has been busy addressing the BWC policy, the use-of-force policy, and other reportedly more pressing issues. The use-of-force DGO, for example, has remained unchanged since 1995 and only became a policy priority in the wake of the Mario Woods shooting. The BWC policy was created after Mayor Lee announced that the SFPD would be receiving body cameras; the Police Commission did not recommend body cameras to the Mayor.

The current Police Commission has acted fairly quickly in creating or revising certain policies, especially when there is a high-profile incident, such as the Mario Woods shooting, involved. In the past two years, the Police Commission has adopted or revised policies concerning domestic violence, bomb threats, children of arrested parents, police district boundaries, and body-worn cameras. However, the ongoing process of revising the SFPD's existing policies is generally slow. The majority of DGO's have not been revised since the mid-1990s. The Police Commission does not perform any systematic assessment of areas where department policies need revision or amendment. Nor does it have an annual plan for revising policies or a timeline for regularly placing policies on the Police Commission agenda for discussion or revision. The Police Commission identified and published on its website criteria for setting priorities in 2011, but commissioners indicate that these criteria are not followed.

### **14. Resource and informational constraints limit OCC's ability to contribute to the policymaking process.**

The Police Commission has enlisted the OCC to assist with policymaking, but the OCC's resource constraints, its inability to access relevant information, and the lack of any policy-focused counterpart in the Police Commission or the SFPD limit the number of policy areas the OCC is able to impact.

City Charter § 4.127 requires the OCC to make quarterly policy recommendations to the Police Commission. The OCC fulfills this mandate and has presented between nine and 19 recommendations each year to the Police Commission or the SFPD. The OCC's ability to analyze policy recommendations or assist with and monitor their implementation is again limited by the OCC's resource constraints. One of the 3.75 attorney positions in the OCC is earmarked for a policy analyst, but that analyst is only able to spend an estimated 20 percent of her time working on policy. The remainder of her time is devoted to reviewing sustained complaints so that the OCC does not fail to meet the one-year statute of limitations. The OCC Director has indicated that the agency is in the final stages of hiring another attorney who will work on

policy, allowing the existing policy analyst to spend more of her time working on policy development and implementation.

The lack of a robust policy planning division within the SFPD hampers the OCC's policy function too. There is no single counterpart at the SFPD for the OCC's policy analyst to work with. As a result, the OCC policy analyst has to identify someone in the department who might want to take time to work with her on an issue-by-issue basis. The OCC policy analyst also spends an inordinate amount of time implementing the policy recommendations that the OCC helped develop. For example, the OCC has been working on SFPD policies and procedures surrounding various aspects of language access since at least 2009. Over that time, the OCC has helped develop roll-call trainings and a training video, helped draft department bulletins, and revised dispatch procedures, among other improvements. While it is laudable that the OCC remains as committed as it is to ensuring its recommendations are implemented, it is unfortunate and unsustainable that it has had to spend so much of its own limited time and resources on implementation and follow-up.

Other constraints limit the OCC's ability to impact policy as well. For example, the OCC does not have a statistician on staff. While the OCC collects and disseminates an impressive amount of data, it does not have the resources or expertise to analyze it. In addition, the OCC policy analyst does not have access to IAD complaint information or officer-level EIS information, and cannot take that information into account when considering what policy initiatives to pursue.

Despite these limitations, the OCC has recommended and implemented policy changes in a number of areas over the past five years on topics including children of arrested parents, communication with sexual assault victims as to the status of their cases, body-worn cameras, domestic violence, police-initiated driver incapacity proceedings, mental health crises, officer involved-shooting investigatory procedures, pursuits, and interactions with juveniles. The changes implemented range from amending DGOs and issuing department bulletins to developing and delivering training materials. As noted, the OCC's role does not typically stop at the recommendation phase, but persists through implementation. The OCC has not focused on any recommendations relating to biased policing in the last five years.

The pace of OCC-driven policy change varies significantly. At times, it can move relatively rapidly. DGO 7.04, which concerns children of arrested parents, was implemented the year after the OCC first proposed it, and revisions to DGO 6.09, which concerns domestic violence victims, was passed the same year that the OCC recommended changes. In other instances, however, the OCC's recommendations go unheeded for long stretches of time. For example, the OCC first suggested policy changes to the SFPD's pursuit policy in 2007, but it was not until 2013 that the Police Commission revised the DGO covering the topic (DGO 5.05). Further, many of the recommendations made each year to the Police Commission or SFPD are ignored entirely and are not pursued by the OCC, the Police Commission, or the SFPD. While it is not immediately clear why some recommendations are implemented and others languish, the fact that there only appears to be one person in San Francisco's entire police apparatus whose job is to focus (20 percent of her time) on policy is undoubtedly a highly salient factor.

## Recommendations

### **1. An Office of Inspector General should be created that should regularly audit the SFPD and OCC for operational effectiveness and compliance with policy.**

An oversight body's capacity to audit basic police operations holds "the greatest potential for enhancing police accountability."<sup>299</sup> Audits are necessary to ensure that the SFPD is functioning effectively and complying with applicable policies, and also helpful to enhance transparency, accountability, and public trust in the SFPD. The subject matter of such audits should include the department's high-risk activities, including use-of-force investigations, internal-affairs investigations, detective operations, search warrants, property- and evidence-handling procedures, and training. To be effective, such audits should be conducted on a regular basis by an independent auditor who is knowledgeable about policing and dedicated to the SFPD. Such an auditor must possess full legal authority to interview SFPD and other city personnel, unfettered access to all SFPD files and documents, and a staff and budget to conduct effective audits. An auditor should also have full discretion to determine what and how to investigate or audit.

Because no entity currently conducts such audits in the City, an SFPD auditor function should be created. Based on an evaluation of existing city functions and the requirements of an effective auditor of a law enforcement agency, the Panel recommends creating an Office of Inspector General (OIG). This entity would exist and function independently from any other existing city entity, and report to the Police Commission or the Board of Supervisors. An independent OIG would mean that the OIG's funding is either earmarked by law (as with the Controllers' Office), or set by the Board of Supervisors subject to Police Commission input (as with the OCC), and that OIG leadership is hired and fired by a governing body outside of the SFPD. If dedicated to police oversight, an OIG can develop the expertise necessary to perform qualitative investigations into the culture and practices of a department. Police Commissioners do not have the time or expertise to conduct effective audits and, therefore, should not bear principal responsibility for regular audits. Adding an OIG would provide a much-needed boon to oversight of the SFPD without detracting from the limited Police Commission resources already dedicated to policymaking and disciplinary functions.

The OIG should also audit the OCC. The OCC was last audited in 2007, with a follow-up reviews in 2009 and 2012 to assess how OCC was implementing that audit's recommendations. It should be audited more regularly. The OIG staff should include attorneys and outreach specialists who can evaluate the outcomes of OCC investigations and the effectiveness of the OCC's community outreach. Audits should be followed by public reports that hold the staff of the OCC—up to and including the Director—accountable for the agency's performance.

To the extent that an OIG cannot be created or there is a delay in its creation, the City should devote resources from the City Services Auditor specifically to audit the SFPD. The City should take this step immediately. The City Services Auditor should hire auditors with police auditing expertise and develop audit teams to conduct regular and periodic audits of the SFPD's high-risk activities. Hiring dedicated staff or consultants with experience in performing law enforcement audits would enhance the City Services Auditor's ability to effectively audit the SFPD.

The Panel has identified a number of issues that can and should be audited, including the following.

- **Whether the bias exhibited by the officers involved in the texting scandal is limited to those officers or is more widespread within the SFPD.** The content, context, and quantity of racist and homophobic text messages raise serious questions as to whether or not bias is widespread within the SFPD.

The Panel's analysis of stop, search, and arrest data, and anecdotal evidence gathered during the course of this investigation (discussed in the Stops, Searches, and Arrests and Culture chapters of this report) raise additional concerns. Also, the recent disclosure of additional racist and homophobic

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<sup>299</sup> Samuel Walker & Carol Archbold, *The New World of Police Accountability* 181 (2d ed. 2014).

text messages involving at least four other SFPD officers underscores the need for a deeper review. Although the Panel set out to investigate whether bias was endemic within the SFPD, it encountered many challenges<sup>300</sup> that the Police Commission, the City Services Auditor, or another entity vested with investigatory powers or granted more cooperation<sup>301</sup> could likely overcome. For example, the Police Commission and City Services Auditor have subpoena power and the authority to compel witnesses. They likewise can access records and personnel to which the Panel did not have access. Although commissioners have cited conflict of interest concerns, the Panel does not perceive an actual or potential conflict between initiating a review of the SFPD at large and adjudicating the merits of individual officers' cases. There is no reason why such a review could not be conducted while individual officers' disciplinary cases are pending.

- **Whether disciplinary charges are brought within the applicable statute of limitations.** There is no existing oversight process to ensure that disciplinary matters are investigated and charged within the one-year statute of limitations. Compliance with the statute of limitations can, and should, be audited routinely to ensure that disciplinary matters do not lapse. Additionally, IAD should be held to the same standard as the OCC and be required to report to the Commission and publicly on how long it takes to close the matters that are pending before it.
- **Whether data is collected as required, and whether that data reveals any concerning patterns.** As noted above and in Chapter 1: Stops, Searches, and Arrests, the SFPD collects a large amount of demographic data on stops, searches, and arrests. However, that data is not always collected as required, and can be audited to ensure that officers are complying with data collection requirements. The data can also be audited to identify whether there are patterns that may raise concerns regarding bias, such as disparities across station locations.
- **The OCC should be subject to a regular and periodic audit.** The 2007 audit revealed deep problems with OCC's then-existing management and investigation procedures (or lack thereof). Problems persist as evidenced by the extremely high percentage of sustained cases that take more than nine months to close and the fact that sustained complaints rarely result in serious discipline. The OCC should continue to be audited periodically to ensure that management is exercising effective leadership, that the OCC is making best use of available resources, that complaints of serious misconduct are thoroughly investigated, and that the policies and procedures in place are followed and effective. The audit should generate specific recommendations for improvement.

## **2. The investigative and policy capabilities of the OCC should be enhanced.**

A necessary step to increasing the OCC's efficacy is increasing its budget (unless shown otherwise by an in-depth audit). Additional funding would permit the OCC to hire additional investigators. The OCC should have funding sufficient to lower its average caseload per investigator to 16, the level recommended by the 2007 audit (again, assuming a new audit does not recommend otherwise). Reducing investigator caseloads would permit the OCC to resolve investigations more quickly and devote more time to each investigation. More time spent on each investigation might result in more investigations coming to definitive conclusions and a reduction in "not sustained" resolutions where an investigator simply did not have time to gather additional facts that might have proven whether the alleged incident occurred or not. Increased resources would also permit OCC investigators to perform additional outreach and permit the OCC to hold investigative hearings.

Increased resources would also permit the OCC to upgrade its technology. The OCC currently has only one information technology employee who is responsible for day-to-day IT needs as well as the agency's

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<sup>300</sup> See Introduction at page 7 for more detail.

<sup>301</sup> The Panel welcomes the Department of Justice's Community Oriented Policing Services' (COPS) review of the SFPD and would recommend that they look at this issue, among other issues described in this report. However, COPS review is not sufficient to ensure oversight of the SFPD. It is essential for San Francisco to implement its own permanent structure for conducting regular audits, and not rely on outside groups or federal agencies to provide oversight.

data infrastructure and web presence. Additional IT resources would allow the OCC to keep its website more current, implement new technology more quickly, and make more aspects of investigations digital. Additional IT resources are imminently necessary if the OCC is to be able to fully utilize the high volume of body-worn camera footage that will be available to it soon.

The OCC's policy function would also benefit from additional resources. The OCC should be able to devote more than 20 percent of one person's time to policy. A truly full-time policy analyst could take on additional policy initiatives and ensure that more of the recommendations made to the Police Commission and SFPD are acted upon. The ability to implement policy would be greatly enhanced by a more robust policy division within the SFPD itself.

### **3. The Police Commission should have a dedicated policy analyst and access to a statistician.**

The Police Commission should hire a dedicated policy analyst responsible for identifying the Police Commission's annual policymaking priorities; overseeing the ongoing policy revision process; liaising with the City Attorneys' Office, OCC, SFPD, and other stakeholders; and developing and drafting policy. This analyst should have access to all complaint, discipline, and EIS information that the Police Commission currently has, and should report to the Police Commission. The Police Commission was previously given a budget to hire an analyst, but was unable to fill the position. The budget given to the Police Commission for an analyst should be sufficient to attract and retain a well-qualified and experienced person for the role.

Whereas the Police Commission's current approach to policymaking is mostly reactive, a dedicated policy analyst would help the Police Commission become more proactive in identifying potential problems before they arise and more systematic in tackling policy initiatives. Such an analyst would also give the Police Commission its own policy-drafting resources, so that it no longer needs to rely on the OCC's policy analyst or the SFPD's Written Directives Unit to draft policies.

The Police Commission should also consider adding a statistician to its staff or finding another way to analyze the great amounts of data to which it has access, either by hiring a consultant or working with a local university. Data-driven policymaking could be more widely impactful than the current ad hoc approach.

A policy analyst and statistician within the Police Commission would have access to information about IAD complaints, EIS information, and other information within the SFPD to which the OCC's staff does not have access. It would also permit the Police Commission to devote more time to reviewing and analyzing data, information, and reports from the OCC and SFPD to determine whether policies are effective.

### **4. The Police Commission should develop clear guidelines allowing the use of body-worn camera footage in disciplinary proceedings.**

As recommended in Chapter 1: Stops, Searches, and Arrests, it will be important for the Chief, IAD, OCC, and Police Commission to have clear rules on whether and under what circumstances BWC footage can be viewed and used in disciplinary proceedings. The Police Commission should carefully consider the implications of BWC footage on disciplinary cases, as well as the impact that cameras have had on officer discipline in other jurisdictions, and craft disciplinary policies accordingly.

### **5. Police oversight should be as transparent as the law allows.**

As a guiding principle, police oversight in San Francisco should be as transparent as state law allows. Part of the public's dissatisfaction with police oversight in San Francisco is a sense that the process is opaque and it is difficult to know what is going on, particularly for complainants. As discussed above, current state law places significant restrictions on transparency, but even so, several steps could be taken even under current law.

- **More thorough public reporting.** It should be easier for members of the public to obtain information about disciplinary proceedings pending within the SFPD and in front of the Police Commission. Although the Penal Code does not permit information regarding disciplinary proceedings to be published in a manner that makes it possible to identify the officer(s) involved, current law is no obstacle to better and more accessible publication of data and other information stripped of all identifying details. The OCC already publishes such data in a thorough and accessible report posted on its website. The IAD, the Chief's office, and the Police Commission should seek to emulate these OCC reports, which appear to provide roughly as much information as current law permits, and are explicitly permitted by the principal MOU between the POA and the City.<sup>302</sup> Publication of a short summary of the facts of a complaint and the outcome of an investigation, stripped of identifying details, is consistent with existing law and would enhance public knowledge about the oversight process. Similarly, tracking and publication of the number of officers who are the subject of repeated complaints (stripped of officer-identifying information, as the law requires) would allow the public to know whether there are particular officers who may be a source of concern. All these reports should be made easily accessible to the public via the Internet.

- **A single, integrated public source for information about disciplinary proceedings on the Internet.** Perhaps an even more significant transparency-related problem with the current system is that there is no realistic way to track cases as they move between the OCC, the IAD, the Chief's office, and the Police Commission. Complainants and other members of the public are understandably frustrated by this disconnect, as it is reasonable for them to want to follow the progress of proceedings from start to end. To fix this problem, a single website should be established that combines reports from all entities involved in police oversight in San Francisco. Each case anywhere in the system should be assigned a unique identifying number that it retains throughout its life, so as to allow complainants and other members of the public to know the status of any particular case at any time.

The Los Angeles Police Department's reports of officer discipline can serve as a helpful model. The LAPD publishes a comprehensive report of officer discipline on its website.<sup>303</sup> In this report, the LAPD provides charts showing the factual allegations, charges, officer rank, and the penalty imposed for various complaints, identified by complaint number. This report allows the public to easily compare the sustained allegations against the punishment imposed.

Moreover, as part of this integration of reporting, OCC, IAD, and the Police Commission should adopt a uniform definition of "bias" and use it to track cases throughout the system involving allegations of bias against San Francisco police officers. The lack of a uniform definition of "bias" hampers current efforts to determine whether complaints alleging bias are being handled appropriately.

- **Consistent, publicly available standards for Police Commission discipline.** Updating and publishing the SFPD and Police Commission's disciplinary guidelines will enhance transparency and consistency of officer discipline. The Police Commission and Chief should consider applying the guidelines in a manner similar to the U.S. Sentencing Guidelines, which specify the range of recommended punishment and require explanation for any deviation from the range. Additionally, the Police Commission might consider auditing a sample of the Chief's decisions to ensure that the Chief is exercising discretion in an appropriate manner. The publication of this information would allow the public to draw conclusions about the appropriateness of the outcomes of Police Commission disciplinary proceedings. Current publicly available information is insufficient to determine whether the Police Commission is reaching appropriate and effective outcomes.

<sup>302</sup> See Memorandum of Understanding Between City and County of San Francisco and San Francisco Police Officers' Association Units P-1 and P-2A, July 1, 2007–June 30, 2018, Per Amendment #5, ¶ 81, <http://sfbu.org/sites/default/files/Full%20MOU/Documents/19312-POA%20MOU%20P1%20P2A%202007-2018%205.pdf>.

<sup>303</sup> See, e.g., Los Angeles Police Dep't, City of Los Angeles, *Discipline Report for Quarter 4, 2013* (Mar. 12, 2013), <http://lapdonline.org/assets/pdf/4thQtr2013/520final.pdf>.

- **Better communication with OCC complainants.** Current law does not prevent OCC complainants from being kept better informed about the status and outcomes of their investigations. At a minimum, when a complaint is sustained, complainants should be sent updates about the case as it progresses to the Chief's office and/or the Police Commission. Complainants should also be informed that they can track the progress of their cases via the website described above. When a complaint is resolved, the OCC should provide the complainant with the maximum amount of information permitted by law. Although the Penal Code precludes the OCC from providing a complainant with a full copy of the OCC's report and recommendation, no statute or case law appears to prohibit the OCC from providing complainants with a basic factual summary of the OCC's investigation, stripped of any identifying information, similar to what the OCC publishes in its monthly, quarterly, and annual reports.<sup>304</sup> For instance, if a complaint is not sustained because of a "he said/she said" situation in which the complainant's account contradicted that of the officer and no additional credible witnesses or evidence could be located, the complainant should be informed of that fact.
- **Timely reporting consistent with existing requirements.** All reports regarding officer discipline should be made available to the public promptly, so that the information can serve its intended purpose of enabling effective civilian control of the SFPD. At a minimum, information should be published in a timely manner in compliance with existing legal requirements. The Chief is required to report monthly to the Police Commission on his decisions regarding all sustained OCC and IAD complaints, and to publish those reports on the SFPD's website within 10 days of issuance. The OCC is under a similar timeliness obligation. Yet it routinely takes months or even years for these reports to be published on the Internet, particularly regarding the Chief's decisions in IAD cases. Timelier reporting is both required by policy and is essential to effective public oversight of the SFPD.
- **Consideration of further legislative changes.** As noted, legislation proposed in February 2016 in the State Senate would have eased some of the restrictions that exist on public disclosure of disciplinary proceedings under Copley Press and the Penal Code. Although this bill did not succeed, the Legislature should give careful consideration, in light of current circumstances, to whether current law strikes the right balance between officer privacy and the public's right to access information regarding discipline in cases involving allegations of police misconduct.

<sup>304</sup> See Cal. Penal Code § 832.7(a), (c); *S.F. Police Officers Ass'n v. Superior Court*, 202 Cal. App. 3d 183, 192 (1988) (prohibiting dissemination to complainant of full OCC report or recommendation); *Copley Press, Inc. v. Superior Court*, 39 Cal. 4th 1272, 1297 (2006) (permitting disclosure of complaint information so long as officers involved are not identified).

# Chapter 6:

## *Brady Policies and Practices*

### **Background**

This chapter discusses issues related to the SFPD and DA's policies regarding *Brady v. Maryland*. The Panel found that while both have written policies and the two agencies communicate well at times, there are gaps in the SFPD's policy (especially pertaining to information contained outside of an officer's personnel file), and neither policy contains mandatory deadlines.

In 1963, the U.S. Supreme Court in the landmark decision *Brady v. Maryland* ("*Brady*") held that the Due Process Clause of the Fourteenth Amendment requires the prosecution in a criminal case to disclose all exculpatory evidence to the accused.<sup>305</sup> These disclosures, commonly known as "Brady disclosures," include any information that is favorable to the accused, material, and relevant to guilt or punishment. *Brady's* disclosure requirements have been interpreted by California courts to include evidence of witness bias, including racial or other biases of officers who testify in criminal cases.<sup>306</sup> The *Brady* disclosure obligation extends to "evidence known to others acting on the government's behalf."<sup>307</sup> Finally, the obligation reaches beyond evidence in the actual possession of the prosecution, and extends to material in the possession of law enforcement agencies assisting the prosecution.

This chapter briefly discusses the two incidents of SFPD officers involved in exchanging racially biased and homophobic text messages, the first of which led to the formation of this Blue Ribbon Panel. It also discusses how the SFPD's *Brady* policies and protocols operate and what deficiencies exist to explain gaps in the system that allowed the biased text messages to go undisclosed to the DA for two years. The failure of San Francisco law enforcement to comply in a timely manner with *Brady* disclosure requirements undermines not only the constitutional rights of the criminally accused, but also the integrity of and faith in the criminal justice process in San Francisco. The recommendations included at the end of the chapter will improve compliance under *Brady v. Maryland* and avoid circumstances where *Brady* material is not provided in a timely manner by the SFPD to the DA for disclosure. More fulsome and timely *Brady* compliance will foster greater faith by citizens in the fair administration of justice.

### **First Texting Scandal**

The racially biased and homophobic text messages written and transmitted in 2012 by 14 San Francisco police officers ("First Texting Scandal") that led to this Panel's review constitute clear *Brady* material under

<sup>305</sup> *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

<sup>306</sup> *In re Anthony P.*, 167 Cal. App. 3d 502, 507-10 (1985).

<sup>307</sup> *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

California law.<sup>308</sup> These text messages were not turned over to defendants against whom the officers in question would and did testify. Members of the SFPD's IAD Criminal Division learned of the racially biased and homophobic text messages in December 2012; however, the department did not share the text messages or disclose their existence to the DA. For more than two years, some of the police officers in question continued to work in the field, participate in criminal investigations, and testify as witnesses in criminal trials.

The DA learned of the 2012 racially biased and homophobic text messages only after the *San Francisco Chronicle* published some of the text messages in March 2015.<sup>309</sup> Police officers implicated in the First Texting Scandal testified in at least nine San Francisco criminal trials without timely disclosure of the *Brady* material to criminal defendants.<sup>310</sup> Six of the nine trials resulted in guilty verdicts: three against Black defendants, one against an Asian defendant, and three against White<sup>311</sup> defendants. No data exists on whether these individuals were LGBT.

### **Second Texting Scandal**

In or around August 2015, the SFPD discovered a second batch of racially biased and homophobic text messages exchanged between SFPD officers in an unrelated criminal investigation of another SFPD officer. These text messages were written and transmitted in 2014 and 2015 by four other SFPD officers, and received by three officers who did not respond to the messages ("Second Texting Scandal," and together with the First Texting Scandal, hereafter referred to as the "Texting Scandals"). These messages also constitute clear *Brady* material.

Sometime between October 2015 and January 2016, the SFPD first notified the DA that the police officers involved in the Second Texting Scandal had "pending" *Brady* material without disclosing the substance of the material: more racially biased and homophobic text messages. The SFPD had provided the DA with investigation files in a criminal case against an SFPD officer that contained some of the text messages, but did not indicate to the DA that there were biased text messages in the file. The DA learned of the substance of the text messages after reviewing thousands of pages of texting records in the SFPD criminal investigation file. Although these officers did not testify in any criminal cases after the SFPD discovered the text messages, this second delay of two to six months in the disclosure of pending *Brady* material from the SFPD to the DA suggests gaps in the policies and/or practices of San Francisco law enforcement agencies.

### **Peace Officer Personnel Files and *People v. Johnson***

In California, the prosecution's *Brady* disclosure obligation is in some tension with California's statutory protections for the rights of peace officers where *Brady* material exists in a peace officer's personnel file. While *Brady* requires the prosecution to disclose information in the possession of investigating agencies, the California statute makes peace officer personnel files confidential even to the prosecution absent judicial determination that disclosure is necessary.<sup>312</sup> California law also prohibits law enforcement agencies from disclosing the substance of ongoing investigations of officer misconduct.<sup>313</sup>

In July 2015, the California Supreme Court in *People v. Superior Court (Johnson)*<sup>314</sup> addressed how *Brady* material contained in confidential SFPD personnel files should be disclosed and to what extent

<sup>308</sup> *In re Anthony P.*, 167 Cal. App. 3d 502, 507-10 (1985).

<sup>309</sup> Kale Williams, *SFPD Probes Police Officers' Bigoted Texts*, *S.F. Chronicle* (Mar. 14, 2015).

<sup>310</sup> The DA has advised there may be three additional criminal cases where officers implicated in the First Texting Scandal testified, but their testimony has not yet been confirmed. Two of these cases resulted in guilty verdicts, one of which was against a Black defendant.

<sup>311</sup> One of the defendants listed as "White" may have been of Hispanic descent.

<sup>312</sup> Cal. Penal Code § 832.7(a); Cal. Evid. Code §§ 1043, 1045.

<sup>313</sup> Cal. Penal Code § 832.7.

<sup>314</sup> *People v. Superior Court (Johnson)*, 61 Cal.4th 696 (2015).

prosecutors are responsible for making such disclosure. Weighing the defendants' due process rights against peace officers' privacy rights, the court held that the prosecution in criminal cases does not have unfettered access to confidential personnel records of peace officers, and thus cannot turn over material in a police officer's personnel file to the defense. Prosecutors must fulfill their *Brady* obligation by informing the defense that the police department has records that may contain exculpatory evidence, whereupon the prosecution or defense may file a motion to review the materials. The U.S. Supreme Court has not yet addressed the implications of *Brady* in the context of police officer personnel files.

The *Johnson* case addressed the limited issue of *Brady* material in personnel files and not the broader issue of the SFPD's obligation to turn over exculpatory material to the DA that exists at the department outside of police officers' personnel files. Following the *Johnson* decision, California Attorney General Kamala issued Published Legal Opinion No. 12-401 in October 2015 addressing the prosecution's obligation to disclose *Brady* material contained in peace officer personnel files.<sup>315</sup> The Attorney General opinion concluded that prosecutors are not authorized to directly review the personnel files of peace officers who will or are expected to testify as prosecution witnesses, and law enforcement agencies may lawfully release to the prosecuting agency the names of peace officers who have *Brady* material in their personnel files.

### District Attorney's *Brady* Policies and Procedures

In 2010, then DA, current California Attorney General Kamala Harris, implemented two separate *Brady* disclosure policies: (1) an internal policy<sup>316</sup>, which pertains to material in the actual possession of the DA, and (2) an external policy<sup>317</sup>, which pertains specifically to information contained in confidential SFPD personnel files.<sup>318</sup> Additionally, in 2015, then DA updated its disclosure protocols in light of the California Supreme Court's decision in the *Johnson* case.

The internal policy governs the DA's maintenance and disclosure of potential *Brady* material or information about peace officers discovered by DA prosecutors and employees. An example of internal *Brady* material would be evidence that a peace officer engaged in conduct demonstrating untruthfulness, such as lying on the witness stand in a criminal trial. Under the DA's internal policy, prosecutors and employees are obligated to "timely report" the discovery of potential *Brady* information to their immediate supervisors.<sup>319</sup> Supervisors are responsible for obtaining all available *Brady* information and forwarding the materials to the DA's internal *Brady* Committee for review.<sup>320</sup>

The DA's *Brady* Committee is composed of the Chief of the Criminal Division and the three managing attorneys of the Misdemeanors, Preliminary Hearings, and General Litigation sections. This committee determines whether conduct discovered by DA prosecutors or employees requires (1) *Brady* disclosure; (2) further investigation by the police officer's employer, e.g., the SFPD, in order to make a determination; or (3) judicial *in camera* review to determine whether disclosure is necessary. If the committee determines the material is *Brady*, the DA notifies the peace officer and the head of the officer's employing agency, e.g., the SFPD. The officer is given the opportunity to respond to the allegations in writing.<sup>321</sup> The DA is responsible for maintaining secured administrative files for officer-related *Brady* information.

The DA's external policy guides how prosecutors shall handle the existence of *Brady* material in confidential SFPD personnel files, which are not accessible by the DA. The purpose of the DA's external policy is to provide an efficient way for the SFPD to identify and disclose the existence of *Brady* material

<sup>315</sup> 98 Ops. Cal. Atty Gen. No. 54, Opinion 12-401 (Oct. 13, 2015).

<sup>316</sup> Attached as Appendix J.

<sup>317</sup> Attached as Appendix K.

<sup>318</sup> For all other law enforcement agencies, such as the CHP or federal agencies, the DA sends a written inquiry to the agency asking if any *Brady* material exists in the personnel file of the material peace officer involved in the investigation.

<sup>319</sup> No specific timetable is outlined in the SFPD Internal Policy.

<sup>320</sup> Again, no timetable for forwarding *Brady* materials to the Committee is imposed.

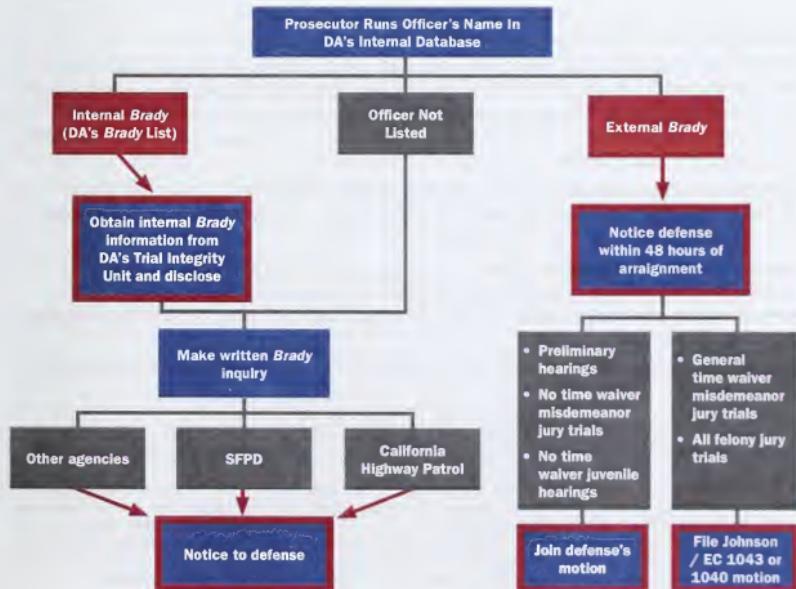
<sup>321</sup> There is no timetable for such response.

in SFPD personnel files because of the large volume of inquiries from DA prosecutors—*inquiries must be submitted for every officer who is a potential witness*. The external policy addresses the type of *Brady* material covered by SFPD Bureau Order 2010-01, discussed below.

The DA has an internal protocol for trial prosecutors to check their cases for potential *Brady* material. Trial prosecutors are required to conduct *Brady* inquiries of all material peace officer witnesses in their cases before arraignment and again when they issue subpoenas for officers to testify. These *Brady* inquiries are conducted by running the officers' names through an internal *Brady* database maintained by the DA's Trial Integrity Unit. This internal database keeps track of *Brady* material known by the DA, either pursuant to its internal *Brady* policy or disclosed to it by the SFPD pursuant to the external *Brady* policy. There are three possible results of a *Brady* inquiry, each of which requires a prosecutor to take different steps.

- **Known existence in database of internal *Brady* material:** A record exists in the database of internal *Brady* material relating to the peace officer. The prosecutor is required to obtain the internal material from the secured files for disclosure to the defense, and also make a written inquiry to the employing agency to ask if any additional *Brady* material exists in the officer's personnel file. The prosecutor is required to notify the defense within 48 hours of the defendant's arraignment.
- **Known existence in database of external *Brady* material:** A record exists in the database of external *Brady* material in the possession of the SFPD relating to the peace officer. The prosecutor is required to notify the defense within 48 hours of the defendant's arraignment.
- **No database record of *Brady* material:** No record is in the database of *Brady* material relating to the peace officer. The prosecutor is required to send a written inquiry to the employing agency to ask if any *Brady* material exists in the officer's personnel file.

#### DA Internal Protocol for *Brady* Inquiry



In addition to these policies, the DA recently implemented an additional notification procedure in its subpoena process to ensure identification and disclosure of *Brady* material pertaining to peace officers. When prosecutors log into the DA's case management system to issue subpoenas for peace officers, the system now automatically alerts them if their case involves peace officers with known *Brady* material.

Where the prosecution determines that *Brady* material exists for a peace officer, it uses a template to notify the defense. When *Brady* material is placed or resides in a peace officer's confidential personnel file, either the defense attorney or the prosecutor can then file a discovery motion pursuant to California Evidence Code § 1043 or 1040 for a judge to conduct an *in camera* review of the material to determine if it shall be disclosed.<sup>322</sup> Trial prosecutors are required to keep a record of all *Brady* inquiries and disclosures to the defense in their case files.

The DA Trial Integrity Unit is responsible for updating the *Brady* disclosure protocol through policy directives, conducting *Brady* compliance training for prosecutors, maintaining a current internal *Brady* database and administrative files, and overseeing the office's *Brady* disclosure procedures.

In addition to the internal and external *Brady* Policies, the DA also issues policy directives to update the office's *Brady* disclosure protocols. For example, on September 16, 2015, the DA issued a policy directive updating the office's *Brady* protocol in light of the California Supreme Court decision in *Johnson*. These directives are distributed office-wide and are also available to the office's prosecutors on the DA's shared drive.

The Trial Integrity Unit also provides *Brady* training to prosecutors. New hires are required to complete a "boot camp" that covers various law enforcement topics. The boot camp includes live training on the prosecution's *Brady* obligations and an explanation of the office's protocol for meeting these obligations. Lateral hires must attend *Brady* training, although it is not as rigorous. The Trial Integrity Unit also provides recurrent, mandatory *Brady* training to all DA prosecutors.<sup>323</sup>

### SFPD *Brady* Policy and Procedures

On August 13, 2010, the SFPD under then-Chief of Police George Gascón issued Bureau Order 2010-01<sup>324</sup>, the first and only written *Brady* policy for the department, which sets forth a procedure for the disclosure of *Brady* materials contained in SFPD personnel files. The bureau order, which is intended to work in conjunction with the DA's internal and external *Brady* policies, defines three categories of *Brady* material in an officer or employee personnel file.

- **Sustained findings of misconduct:** Incidents where the Chief of Police or Police Commission sustains a finding of misconduct that falls within the definition of *Brady*, and there are no appeals pending or a finding has been upheld on appeal
- **Pending charges of misconduct:** Charges or appeals of misconduct pending before the Police Commission for either an active police officer who is likely to be called as a witness before the disciplinary proceedings are concluded, or a police officer who retires before disciplinary proceedings have been concluded
- **Criminal misconduct:** Arrests, pending criminal charges, or convictions for felony or moral turpitude offenses of the police officer

Bureau Order 2010-01 only addresses *Brady* material that is placed in a peace officer's personnel file. It does not encompass situations where the SFPD possesses *Brady* material that exists and is known to

<sup>322</sup> Whether the prosecutor or defense attorney will file the motion depends on whether the defendant has waived his speedy trial rights. Because of the 16-day notice requirement for discovery motions, the prosecutor cannot file the motion and comply with the notice requirement unless the defendant has waived speedy trial rights. Thus, for preliminary hearings, misdemeanors with no time waiver, jury trials, and juvenile hearings with no time waivers, the defense will file the motion and the prosecutor will join the motion. For general time-waiver misdemeanors, jury trials, and all felony jury trials the prosecutor will file the motion.

<sup>323</sup> The Trial Integrity Unit's mandatory *Brady* training for prosecutors qualifies for Continuing Legal Education (CLE) credits.

<sup>324</sup> Attached as Appendix L.

SFPD officers or personnel, e.g. *Brady* material that is discovered in the scope of an IAD Criminal Division investigation or is discovered at a station, but is not placed in an officer's personnel file.

Additionally, Bureau Order 2010-01 specifically carves out "situation[s] in which the Department determines that the existence of *Brady* material may prevent an employee from effectively testifying." The 2010 bureau order stated that the SFPD would implement a separate policy to address that situation, but no such policy has been forthcoming.

The SFPD maintains a *Brady* Unit within the department's Risk Management Office. This unit is responsible for responding to the DA's written inquiries regarding the existence of *Brady* material in police officer personnel files, handling *Brady* motions filed by the DA and defense bar with regard to *Brady* material in SFPD personnel files, and making any necessary *Brady* disclosures as ordered by a court. In carrying out these responsibilities, the SFPD *Brady* Unit also maintains an internal database to keep track of *Brady* material in personnel files.

Additionally, the *Brady* Unit conducts preliminary reviews of IAD Administrative investigations into peace officer misconduct for potential *Brady* material. If the *Brady* Unit identifies potential *Brady* material, it refers the matter to the SFPD *Brady* Committee for review, and changes the officer's status in the internal *Brady* database to "pending" until the SFPD *Brady* Committee makes a determination. If the DA makes a *Brady* inquiry of the SFPD for an officer with a "pending" status, the *Brady* Unit notifies the DA that potential *Brady* material exists so that the prosecution can in turn notify the defense and proceed in accordance with the DA's external *Brady* policy. According to the SFPD, in October 2015, starting with the Second Texting Scandal, the *Brady* Unit began to proactively notify the DA when an officer's status changed to "pending."

The *Brady* Unit does not have access to IAD Criminal Division investigation files and does not review criminal misconduct allegations against SFPD officers for *Brady* material. The *Brady* Unit also does not review the SFPD's general criminal investigation files (e.g., investigations into civilian criminal conduct) for potential *Brady* material.

Finally, the *Brady* Unit acts as a gatekeeper for referring *Brady* material to the SFPD *Brady* Committee. The *Brady* Unit reviews all sustained findings of police officer misconduct by the Police Commission and IAD Administrative Division for potential *Brady* material. If the *Brady* Unit determines that potential *Brady* material exists as a result of the Police Commission and IAD Administrative Division findings, it sends the material to the SFPD *Brady* Committee to make a determination of whether the material should be referred to the DA.

Before the SFPD may disclose that an officer's or employee's personnel file contains *Brady* material, the internal SFPD *Brady* Committee reviews the materials. The SFPD *Brady* Committee is composed of a retired San Francisco judge with substantial criminal law judicial experience, the Assistant Chief of the Office of the Chief of Staff, the Director of Risk Management, the Head of the Legal Division, the Director of Staff Services, and the *Brady* Unit attorney.

The SFPD *Brady* Committee reviews police officer misconduct findings and determines whether they warrant *Brady* disclosure. Before the SFPD *Brady* Committee makes a recommendation to the Chief of Police, the police officer or employee involved is notified and given 15 days to submit written information as to why the misconduct should not be considered *Brady* material. The SFPD *Brady* Committee reviews the police officer's submission before making a final decision on whether to recommend to the Chief of Police that the department should disclose the material as *Brady* material to the DA.

If the SFPD *Brady* Committee recommends disclosure based on a conclusion that an officer's conduct constitutes *Brady* material, the Chief of Police must approve or disapprove the Committee's recommendation, or make a separate recommendation, in writing. Significantly, the bureau order does not indicate a time frame for the Chief of Police to make this decision. Further, the bureau order gives the Chief of Police the authority to reject the *Brady* recommendation, at which point disclosure is not permitted. If the Chief of Police approves the SFPD *Brady* Committee's recommendation, the department notifies the DA that the police officer has *Brady* material in his or her personnel file that may be subject to disclosure.

In a request under the Public Records Act, the Panel asked for a list of all officers on the SFPD's Brady list, including demographic information. The SFPD informed the Panel that as of May 20, 2016 that there are 105 officers employed by the SFPD who have potential *Brady* material in their personnel files. Of these, 101 are male and 4 are female; 52 are White, 21 are Hispanic, 21 are Asian, 10 are Black, and 1 is Other race. About half of these officers, 57, continue to work in the field. Of the other half, 28 are still active but not in the field, and 20 are inactive but still employed by the SFPD. The SFPD refused to provide additional information, such as the names of officers on the *Brady* list or the date each was placed on the list, citing various provisions that permit withholding information under the Public Records Act.

### **Brady Policies and Procedures of Other San Francisco Law Enforcement Agencies**

In August 2012, San Francisco adopted a *Brady* material policy for all city and county employee personnel files, titled the "Policies and Procedures for Compliance with *Brady* Requirements for Employees Who Participate in Criminal Proceedings" (CCSF *Brady* Policy). The CCSF *Brady* Policy was drafted by the DA and the City Attorney to require that all City and County of San Francisco agencies comply with *Brady* disclosure requirements, while safeguarding confidential employee files. This policy provides procedures for *Brady* review and disclosure, and encourages law enforcement agencies that receive repeated *Brady* inquiries from the DA to implement alternate policies, such as Bureau Order 2010-01 adopted by the SFPD.

For agencies outside of the City and County of San Francisco, e.g., in other counties, the DA sends formal written inquiries to the agencies requesting disclosure of any *Brady* material contained in their personnel files for testifying witnesses.

## **Findings**

### **1. Both the District Attorney's Office and SFPD have *Brady* policies and dedicated *Brady* units and committees.**

Unlike a number of district attorney offices and/or police departments in other major cities and counties, both the SFPD and DA have some *Brady* policies in place. The DA has two *Brady* policies, which appear to cover broad identification and disclosure of *Brady* material, and the DA's office has further issued several policy directives to update its two existing policies from 2010 with developing law. Notwithstanding Bureau Order 2010-01's statement that another *Brady* policy would be forthcoming, the SFPD still has only one *Brady* policy, Bureau Order 2010-01, which addresses *Brady* material only in peace officer personnel files. In February 2016, the SFPD began the process of drafting two additional *Brady* policies.

Both the DA and SFPD have established units dedicated to identifying and disclosing *Brady* materials. Each is staffed with at least one full-time attorney knowledgeable about *Brady* issues and disclosure obligations. Each formed a *Brady* Committee in 2010. Both committees include attorneys or police officers dedicated to reviewing material for potential *Brady* disclosure. The SFPD *Brady* Committee includes a retired judge, who provides an independent legal perspective. The SFPD's *Brady* Unit attorney also sits on the SFPD's *Brady* Committee. Together, these two individuals provide legal guidance for the non-attorney members.

The DA Trial Integrity Unit is impressive. The unit is made up of a team of prosecutors experienced in *Brady* issues and disclosure requirements. This unit has been generally proactive in maintaining, updating, training, and enhancing its *Brady* policies and protocols. In addition to overseeing *Brady* compliance, the Trial Integrity Unit provides new-hire and recurrent training for all of its prosecutors. The unit is also in the process creating a database of *Brady* training materials that will be available and accessible office-wide on the DA's internal shared network. Finally, in light of the two Texting Scandals, the Trial Integrity Unit has engaged an outside attorney to review its *Brady* policies, meet with the DA's internal *Brady* Committee, speak with the staff, and make recommendations regarding *Brady* policies and protocols.<sup>325</sup>

<sup>325</sup> The DA has engaged Gerald Chaleff, former President of the Los Angeles Board of Police Commissioners and Special Assistant for Constitutional Policing to the Los Angeles Chief of Police.

The SFPD Brady Unit consists of one in-house attorney and one paralegal who are dedicated to addressing Brady issues and making the department's Brady disclosures. It is the Panel's sense that the SFPD Brady Unit is understaffed. The Brady Unit attorney is currently drafting two new Brady policies for the Department, which she anticipates will be finalized and implemented in 2016. The SFPD's efforts in this regard are a positive step toward creating an effective set of Brady policies. The SFPD is considering additional Brady Unit staffing.

## **2. The DA's Trial Integrity Unit and SFPD's Brady Unit maintain open and positive lines of communication.**

The positive relationship between the DA's Trial Integrity Unit and the SFPD's Brady Unit attorneys is another notable strength of the current DA and SFPD Brady protocols. Attorneys from both units spoke positively of the working relationship. The two units are in frequent communication and regularly discuss developments in the law. The DA's Trial Integrity Unit attorneys said that the SFPD Brady Unit attorney is quick to respond to inquiries regarding the existence of Brady in officers' personnel files.

## **3. Both the SFPD and the DA policies lack established deadlines for Brady disclosure.**

A serious weakness of both the SFPD and DA policies is that they impose no deadlines for timely review or disclosure of Brady material, which leaves a significant risk of untimely disclosure, or worse, no disclosure to criminal defendants. The First Texting Scandal illustrates the problem. The IAD Criminal Division of the SFPD learned of the text messages as early as December 2012, but the DA did not receive the text messages until March 2015—over two years later.

The Panel was unable to obtain a satisfactory explanation for why the text messages in the First Texting Scandal were not transmitted by the SFPD to the DA for two years. Despite our repeated requests, the IAD Criminal Division officers who had direct knowledge of the text messages during that two-year window declined to be interviewed. In the course of our investigation, at least three possible explanations have been suggested for why the IAD Criminal Division officers who learned of the text messages in 2012 did not disclose them to SFPD management or the DA.

First, the IAD Criminal Division officers who learned of the text messages may have believed that a March 1, 2014, confidentiality order issued by Judge Charles Breyer, the trial judge on the Furminger case, prevented disclosure of the racially biased and homophobic text messages. If so, there is no indication those police officers sought legal guidance from the SFPD Legal Division or the U.S. Attorney's Office regarding the scope of the confidentiality order.

Second, IAD Criminal Division officers may have believed a Rule 6(e) order,<sup>326</sup> regarding secrecy obligations of grand-jury proceedings, prohibited them from disclosing the racially biased and homophobic text messages to the department or the DA. Because the text messages were obtained as a result of a search warrant and not a grand-jury subpoena, they were not likely subject to a Rule 6(e) order. If this belief is the reason for the two-year delay, the police officers should have again sought legal guidance from the in-house attorneys in the SFPD or the U.S. Attorney's Office.

Third, IAD Criminal Division officers could have intentionally suppressed and kept the disclosure of the racially biased and homophobic text messages from the IAD Administrative Division. This scenario is unlikely because the IAD Criminal Division officers participated in, fully cooperated with, and helped facilitate a successful federal police misconduct investigation and prosecution of some of these same officers. None of the individuals interviewed indicated that the IAD Criminal Division officers here espoused or condoned the disturbing racially biased and homophobic text messages exchanged between the 14 SFPD officers, nor was there any suggestion these IAD Criminal Division officers would have wrongfully suppressed disclosure of the text messages.

<sup>326</sup> Fed. R. Crim. P. 6(e).

The IAD Criminal Division officers who could have best explained the circumstances or reasons for the delay in transmitting clear *Brady* material refused to be interviewed. Their decision has not served the public or the department well. These officers may well have had reasonable but perhaps mistaken beliefs regarding their authority to disclose the racially biased and homophobic text messages or ability to seek legal guidance, but the Panel could not obtain firsthand accounts.

Under current policies and procedures, the IAD Criminal Division has no explicit deadline for timely disclosure of the material to the SFPD *Brady* Unit, the *Brady* Committee, or in turn the DA's office. Moreover, even if the 2012 text messages had been timely or immediately referred to the SFPD *Brady* Unit or *Brady* Committee, Bureau Order 2010-01 does not impose any internal deadlines or timeline for the SFPD *Brady* Unit or *Brady* Committee to act, notify, or disclose the material to the DA, whose prosecutors are bound in criminal trial proceedings to disclose all exculpatory materials. A two-year delay in the transmission of *Brady* information to the SFPD might have been avoided had there been clear deadlines for disclosure.

#### **4. SFPD Bureau Order 2010-01 fails to address the treatment and disclosure of *Brady* material outside personnel files.**

The SFPD *Brady* policy, Bureau Order 2010-01, only addresses the disclosure of *Brady* material contained in officer personnel files. There is no procedure for the review or disclosure of *Brady* material that exists outside of officer personnel files, e.g., material sitting at police stations or pending in an IAD Criminal Division investigation. These gaps in the policy present a significant risk of delayed disclosure—or nondisclosure.

Under the above bureau order, *Brady* materials in officer or employee personnel files are only subject to disclosure after the material is referred to the SFPD *Brady* Committee for review, the *Brady* Committee recommends disclosure, and the Chief of Police approves the recommendation to disclose. The department has no requirement to submit potential or clear *Brady* material to the *Brady* Committee for review. Unlike the DA, the SFPD has not implemented a general or broad *Brady* policy covering *Brady* material from whatever source or location.

Notably, Bureau Order 2010-01 expressly contemplated that the SFPD would implement a separate policy to address circumstances in which *Brady* misconduct prevents an officer from testifying at all. The department did not implement this new policy, and now states it is prohibited from doing so because in October 2013—three years after Bureau Order 2010-01 was implemented—POBR was amended to prohibit law enforcement agencies from considering an officer's *Brady* status for promotion, assignment, or any adverse action.<sup>327</sup> While the department may still consider a peace officer's underlying conduct for these purposes, it may not take action based on the officer's *Brady* status alone.

In February 2016, the SFPD *Brady* Unit began drafting two new *Brady* policies. The first would require the SFPD's background investigators to disclose to the *Brady* Unit potential *Brady* material discovered while conducting the background checks on new hires. The second would require the IAD Criminal Division to disclose to the *Brady* Unit potential *Brady* material discovered in the course of a criminal investigation of officer misconduct at the conclusion of the investigation, and at the same time that it submits the investigation findings to the DA for filing arrest warrants. The purpose of this second policy was to create a direct reporting line between the IAD Criminal Division and the *Brady* Unit, where none previously existed. Other than these two draft policies, the SFPD has not implemented any supplemental policies or protocols to address deficiencies in the bureau order in the past five years.

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<sup>327</sup> Cal. Gov. Code § 3305.5; enacted by Senate Bill No. 313.

## **5. SFPD Bureau Order 2010-01 does not impose mandatory reporting obligations upon officers and employees who discover *Brady* material.**

Another pitfall of Bureau Order 2010-01, also highlighted by the Texting Scandals, is that it imposes no mandatory reporting obligation or chain of command for disclosure by SFPD employees who discover clear or potential *Brady* material to the SFPD *Brady* Unit. As discussed below, police officers have not apparently been trained to identify *Brady* material.

In the First Texting Scandal, IAD Criminal Division members learned of the racially biased and homophobic text messages and failed to disclose them to the Chief of Police, Legal Division, or *Brady* Unit for two years.<sup>328</sup> A policy with timely disclosure obligations requiring the IAD Criminal Division employees to promptly report the text messages to the *Brady* Unit or consult with the SFPD Legal Division<sup>329</sup> may have prevented this two-year delay in disclosure.

Likewise, in the Second Texting Scandal, a mandatory *Brady* reporting policy would have required the three officers who received, but did not respond to, the biased text messages to report the messages to the *Brady* Unit for review. This may have resulted in earlier discovery of the texting officers' biased behavior. Instead, the messages were only discovered in the course of an unrelated criminal investigation.

According to the members of the SFPD Risk Management Office, officers and staff are obligated to report misconduct (e.g., conduct unbecoming of an officer) to their superiors or the Internal Affairs Division. However, a general policy is not sufficient to ensure that all potential *Brady* material is properly identified, screened, and timely reported. At a minimum, any official policy that requires the reporting of misconduct should specifically include potential *Brady* material as a category that must be reported.

## **6. There is no reporting chain between the Office of Citizen Complaints and the SFPD's *Brady* Unit or *Brady* Committee.**

Three investigative bodies are responsible for reviewing allegations of SFPD officer misconduct: (1) the SFPD itself, which reviews internal misconduct through its Internal Affairs Division and Chief of Police; (2) the OCC, a local government agency that handles allegations of misconduct reported by civilians; and (3) the Police Commission, which conducts disciplinary hearings on misconduct referred to it by the Chief of Police or the OCC.<sup>330</sup> Under Bureau Order 2010-01, only the SFPD and the Police Commission are required to report sustained findings of misconduct to the *Brady* Committee; there is no direct reporting line between the OCC and the *Brady* Unit or *Brady* Committee. Instead, all OCC sustained allegations must be approved by the Chief of Police or the Police Commission before they are referred to the SFPD *Brady* Committee for evaluation. The lack of a direct reporting chain between the OCC and the SFPD *Brady* Unit or *Brady* Committee presents a risk of delayed disclosure or nondisclosure in cases where the OCC sustains a complaint but the Chief or the Police Commission disagree with the OCC's conclusion.

## **7. The SFPD *Brady* Committee holds quarterly meetings, which may be insufficient to guarantee timely *Brady* compliance.**

The SFPD *Brady* Committee plays a pivotal role in the disclosure of *Brady* material as the body charged with deciding whether officer misconduct rises to the level of *Brady* material. Under Bureau Order 2010-01, the SFPD cannot put *Brady* material in a police officer's personnel file and subject it to disclosure until the Committee reviews the material, determines that it warrants disclosure, and makes a recommendation to the Chief of Police that the material be disclosed. A delay in any of these steps can result in untimely

<sup>328</sup> Panel representatives repeatedly requested interviews of certain SFPD personnel to learn what led to the two-year delay in order to make constructive suggestions to avoid its reoccurrence.

<sup>329</sup> It was clear from our interview of the SFPD attorney that no one consulted her about the *Brady* issues arising from the racially biased text messages involved in the First Texting Scandal. She first learned of the messages in March 2015, and had no firsthand knowledge of the First Texting Scandal except what she learned from the media.

<sup>330</sup> See Chapter 5: External Oversight for more on the OCC and Police Commission.

disclosure to the DA and, ultimately, to a criminal defendant. Failure to ensure timely *Brady* compliance not only violates the due process rights of criminal defendants, but can also potentially lead to criminal cases being dismissed, thus interfering with victims' and their families' access to justice.

The *Brady* Committee currently meets three to four times per year, which presents a risk of exposure and can cause a delay disclosing *Brady* material that can impact cases in progress. This creates a danger that potential or sustained officer misconduct may linger without review for three months or more before the Committee convenes, which means that a police officer for whom clear *Brady* material exists may testify and a criminal defendant may not receive timely materials mandated by *Brady v. Maryland*.

### **8. SFPD officers do not receive regular, quality *Brady* training.**

Regular, quality *Brady* training is fundamental and essential to both prosecutors' and peace officers' full understanding of and compliance with *Brady v. Maryland*. Although *Brady* disclosure obligations fall primarily on the prosecution, law enforcement agencies are part of the prosecution team and need to fully understand *Brady*'s disclosure requirements in order for all exculpatory material to be timely disclosed as required by law.

Unfortunately, the SFPD has not provided the Blue Ribbon Panel with sufficient information to evaluate whether any of its officers receive formal *Brady* training or the quality of any *Brady* training. In response to a Public Records Act Request for *Brady* training materials, the SFPD produced an outline titled "Advance Officer - Continuing Professional Training Course Outlines 2009-2016," which lists *Brady v. Maryland* as one topic. The department objected to producing the substantive training materials on the grounds that the materials are exempt under Government Code section 6254(f). It is not readily apparent how sharing the *Brady* segment of a training program would constitute "intelligence information or security procedures" or would otherwise fall within the exemptions of section 6254(f).<sup>331</sup>

While the SFPD has declined to provide any substantive training materials or attendance logs for any *Brady* trainings, witnesses shared anecdotal information indicating that no formal *Brady* training program for officers exists. An SFPD police officer who has worked for the department for more than 10 years said that he has never received *Brady* training. Outside counsel to the Police Officers' Association represented that after speaking with members of the SFPD, she did not believe any *Brady* training materials existed. The SFPD's *Brady* Unit attorney, perhaps the employee most familiar with the mandate of *Brady v. Maryland*, confirmed that she has never provided any *Brady* training to SFPD officers. Peace officers who are not adequately trained to understand *Brady* and its requirements may not be able to properly recognize and identify *Brady* material, let alone report *Brady* misconduct to their superiors in a timely manner.

## **Recommendations**

### **1. Police officers, employees, the SFPD Internal Affairs Department, and the OCC should be required to provide potential *Brady* material to the SFPD *Brady* Unit within 14 days of discovery.**

The SFPD should require all employees and investigative departments to report potential *Brady* misconduct to the SFPD *Brady* Unit within 14 days of discovery for preliminary review. This mandatory reporting policy should apply with equal force to members of the IAD Criminal Division, IAD Administrative Division, and the OCC, regardless of whether there is a pending investigation. The department can achieve this goal by either implementing disclosure deadlines in its formal *Brady* policy or by updating any existing misconduct reporting policy to specifically include *Brady* misconduct. In either case, the SFPD should establish clear guidelines in practical terms that are tailored to officers and employees at every level in order to assist them with identifying categories of *Brady* material.

<sup>331</sup> See Introduction at page 10 for more on the Panel's PRA request to the SFPD.

**2. The SFPD should require that its *Brady* Unit review reports of misconduct for *Brady* material within seven days of receipt and make a preliminary disclosure of potential *Brady* "pending" investigations to the DA Trial Integrity Unit within three days of this determination.**

Upon receiving reports of potential *Brady* material, the SFPD *Brady* Unit should complete an initial review of reported misconduct for potential or clear *Brady* misconduct within seven calendar days of receipt and mark any such material as "pending" in its internal database. If the *Brady* Unit makes a determination that the material constitutes clear *Brady* information, e.g., racially biased text messages, it should affirmatively make a preliminary disclosure to the DA within three days. Preliminary disclosures can be made without providing details of the allegations or charges by turning over only the name of the implicated officer and noting the existence of a pending investigation with potential *Brady* implications. This would ensure that the DA is aware of a *Brady* issue as soon as possible after the discovery of such material.

**3. The SFPD should require its *Brady* Committee to, absent extraordinary circumstances, complete its review of misconduct and issue recommendations within 45 days of receipt.**

The SFPD *Brady* Committee should be required to review sustained findings of officer misconduct and make a recommendation to the Chief of Police within 45 days of receiving the case to ensure timely disclosure. This 45-day timeframe would allow the SFPD *Brady* Committee sufficient time to evaluate the conduct, determine if the conduct warrants *Brady* disclosure, and if so provide the police officer the requisite 15 days to submit a letter as to why the conduct does not constitute *Brady* material.

**4. The DA should update its formal policies to incorporate firm, mandatory *Brady* disclosure deadlines.**

The DA should impose a specific deadline of 14 days for prosecutors or other DA employees to disclose potential *Brady* information to the Trial Integrity Unit to avoid unnecessary delays in identification and proper disclosure of internal *Brady* information. Implementing such a deadline will ensure that potential *Brady* material reaches the appropriate unit within weeks, not years later. The DA's 2015 policy directive requires prosecutors to disclose *Brady* material or the existence of *Brady* material to the defense within 48 hours of arraignment and/or calling an officer to testify at trial. This appears to be a reasonable timeframe, but these procedural timetable requirements should be incorporated into the DA's formal policies.

While reasonable minds may differ on what the appropriate timeframes are for Recommendations 1 and 2, the two-year delay that occurred in the First Texting Scandal constituted a denial of due process under the Fourteenth Amendment for numerous criminal defendants who went to trial in San Francisco courts. Some clear timetable is appropriate to prevent a recurrence of this type of delay and denial of due process.

**5. The SFPD should implement a *Brady* policy addressing *Brady* material located outside peace officer personnel files.**

The SFPD should develop a policy requiring the SFPD *Brady* Unit to review clear or potential *Brady* material that is in the department's possession, but that may not be found in a personnel file or may not be part of an IAD Administrative Division investigation. This includes, but is not limited to:

- clear or potential *Brady* material that is discovered by the SFPD or its employees, but may not rise to the level of employee misconduct subject to mandatory reporting to the IAD Administrative Division;
- clear or potential *Brady* material that is discovered during or used as evidence in a pending OCC, Internal Affairs Criminal or Administrative Division, or Police Commission investigation for officer misconduct; and
- clear or potential *Brady* material that was discovered during or used as evidence in an OCC, Internal Affairs Criminal or Administrative Division, or Police Commission investigation, but for which the investigation did not result in a sustained finding of officer misconduct.

This new policy should cover the same broad categories of *Brady* material and evidence set forth in the existing policy but that is not contained in the officer's personnel file.

**6. The DA and SFPD should track and review *Brady* data and prepare an annual report to the public on *Brady* findings—sustained and unfounded—in order to understand the magnitude of any problem, identify potential problem stations, and better inform training.**

The DA and SFPD should maintain statistical records of all *Brady* material alleged and reviewed, and release an annual report assessing this data. The compilation and analysis of statistical data could identify trends, problem areas, and inform specific needs for training. For example, such data could identify if certain police stations receive a disproportionate number of reports or sustained complaints of officer bias, e.g., animus toward a particular race, gender, or sexual orientation. The DA should include in its annual report data regarding all allegations and sustained findings of internal *Brady* material broken down by station or units. The SFPD should include in its report data all allegations of *Brady* misconduct, including incidents discovered by or reported to the IAD Administrative Division, the IAD Criminal Division, and the OCC, as well as the types of material the *Brady* Committee determines constitute *Brady* data. Together the agencies should establish and tailor training based on the annual results of the data.

**7. The SFPD should train and encourage police officers to consult with legal counsel on questions of *Brady* application and compliance.**

SFPD officers should be trained and encouraged to consult legal counsel, whether in the *Brady* Unit or the SFPD Legal Division, regarding questions about *Brady* application and compliance. When participating in federal grand jury investigations, officers should be encouraged to consult with the Assistant U.S. Attorneys with whom they are working should any *Brady* issues arise. Such consultation could have avoided a two-year delay in producing the racially biased and homophobic text messages to the DA.

**8. The DA should provide annual interagency *Brady* training tailored to both DA attorneys and SFPD police officers and employees.**

The DA, as the prosecuting agency, should provide quality, annual *Brady* training for its attorneys and the law enforcement agencies with which it works. This training should be tailored to the target audience and explain the applicable *Brady* policy. Ideally, all trainings should be live, and contain real-world, anecdotal, and up-to-date examples of *Brady* material.

For police officers, the DA and the department should provide joint *Brady* training, akin to mandatory sexual harassment training, which will help officers understand the nuances of *Brady*, how to identify *Brady* material, and under what circumstances they should report potential *Brady* misconduct. For example, such trainings should educate officers in practical terms on how to identify *Brady* material, the prosecution team's *Brady* disclosure requirements, how the requirements apply to officers as part of the prosecution team, and how officer misconduct may be subject to disclosure. Training officers to identify potential *Brady* material, to timely consult the *Brady* Unit or SFPD Legal Division if there are any questions, and to timely report potential *Brady* material to the *Brady* Unit would create another level of protection against any failure to disclose *Brady* material.

The DA should also provide training to all SFPD investigative bodies, including the Internal Affairs Administrative and Criminal Divisions, Police Commission, and full OCC personnel, and include the types of material covered by *Brady* and any timeframes or deadlines relevant to each investigative body's function. Every law enforcement agency is responsible for disclosure of potential *Brady* material, and the investigative bodies of those agencies are most likely to encounter *Brady* material. The individuals who make up these bodies must be regularly and properly trained.

**9. The SFPD and DA should coordinate and adopt a uniform *Brady* policy and protocol to assure joint, timely, and seamless interagency communication and compliance.**

San Francisco's two principal law enforcement agencies should coordinate and adopt a uniform *Brady* policy of county-wide application. Although the DA's *Brady* policies and SFPD Bureau Order 2010-01 were designed to work in conjunction with each other, the lack of a uniform policy for both agencies has led to inconsistent practices and has permitted reporting obligations to fall through the cracks. Any county-wide policy must of course also comply with the mandate of the California Supreme Court in *People v. Johnson*.

**10. The DA should require prosecutors to make a record of written requests to testifying police officers to report any *Brady* information and retain police officer responses.**

The DA should require its trial prosecutors to affirmatively, and in writing, ask police officers who will testify in cases to state whether there is known *Brady* material attributable to them or to another police officer in the case. This simple, direct inquiry allows the prosecution to confirm from the source that no *Brady* material exists, and would promote disclosure of *Brady* material that may exist outside of peace officer personnel files, such as the material that was not identified under the current *Brady* inquiry process in the First Texting Scandal. An open dialogue between the prosecutor and the testifying peace officer would also provide an opportunity for clarification and education, as many peace officers may not understand the nuances of what constitutes *Brady* material or triggers a disclosure requirement, e.g., racially biased text messages. Finally, confirming with an officer that no *Brady* material exists allows the prosecutor to confidently represent to both the court and the defense that the prosecution team is unaware of the existence of any *Brady* material in the case. Intentional misrepresentation by a police officer or a prosecutor should be subject to discipline and would constitute evidence of untruthfulness, and thus *Brady* material. Mistaken misrepresentations should be evaluated on a case-by-case basis for potential discipline.

**11. The SFPD should work with the Office of Citizen Complaints to send its sustained findings of misconduct to the SFPD *Brady* Unit and/or *Brady* Committee for review.**

The SFPD should establish a disclosure protocol for the OCC to report its sustained findings of misconduct directly to the SFPD *Brady* Unit and/or *Brady* Committee for review. This protocol should be identical to the existing referral process for sustained findings of misconduct by the Chief of Police and Police Commission.

**12. The San Francisco City Attorney should report civil cases against peace officers to the DA's Trial Integrity Unit.**

If allegations of officer misconduct are not sustained by the Internal Affairs Criminal or Administrative Divisions, the OCC, or the Police Commission, there is a risk that they will not be reviewed by the SFPD *Brady* Unit or *Brady* Committee. As a safeguard, the City Attorney should be required to report all civil lawsuits in which it represents police officers to the DA's Trial Integrity Unit for review for potential *Brady* material.

**13. The DA should consider adopting an open file discovery policy.**

The DA should consider adopting an open file discovery policy which, absent extraordinary circumstances, would allow the defense access to all of the prosecution's evidence bearing on the accused's guilt or innocence. Transparency in the discovery process not only allows defendants and their counsel to adequately prepare a defense, but would also alleviate the risk of inadvertently withholding *Brady* information during the discovery process. Open files are not a complete panacea to *Brady* compliance, however, when *Brady* material is not placed in the prosecution's file in the first instance. The San Francisco Public Defender offered this suggestion, and it seems a wise one to foster greater faith in the fairness of the criminal justice process.

# Chapter 7: Culture

## Background

This chapter contains an examination of SFPD culture, as it relates to racial, gender, ethnicity, and sexual-orientation bias. The Panel found that while witnesses unanimously agreed that individual bias exists, a segment of SFPD officers claimed there is no systemic or institutionalized bias within the department. Another segment of witnesses, however, relayed their belief that bias in the SFPD is institutionalized and widespread. This chapter also finds that the line between the SFPD and the POA is often blurred, and some witnesses indicated they were reluctant to engage with the Panel out of fear of retaliation from either the SFPD or POA.

The concept of "culture" within the SFPD is amorphous and contains both inward- and outward-facing aspects. Culture may explicitly or implicitly exhibit minimal bias, widespread and institutionalized bias, or anything in between. It can also work to promote or impede accountability to the extent biased conduct occurs. The interviews recounted in this chapter occurred prior to the public revelation of the second text-messaging scandal in late April 2016.

The POA publicly and repeatedly has characterized the Panel as a body under District Attorney Gascón's will and influence.<sup>332</sup> Confidential witnesses informed the Panel that current officers were afraid of retaliation by the POA and/or their fellow officers if they spoke with the Panel. As a result, the Panel's working group focused on culture spoke with two categories of current SFPD officers: officers prepared and produced by the POA, who spoke with POA counsel at their sides, and confidential witnesses, who spoke on condition of anonymity. The sole exception was Sergeant Yulanda Williams, who was interviewed and publicly testified about her perceptions on bias in the department.

The investigation of SFPD culture was based predominantly on witness interviews. The investigation was framed, however, by relevant SFPD policies. While many of the SFPD's departmental general orders are relevant to issues of bias and community relations, DGOs 5.17 and 11.07 are of particular importance.

- DGO 5.17, entitled Policy Prohibiting Biased Policing, prohibits discrimination against individuals in the community and was last updated on May 4, 2011.<sup>333</sup> The DGO recognizes that community trust requires the SFPD to act free from bias and "eliminate any perception of policing that appears racially biased."<sup>334</sup> DGO 5.17 defines "biased policing" as "the use, to any extent or degree, of race, color, ethnicity, national origin, gender, age, sexual orientation, or gender identity in determining whether to initiate any law enforcement action in the absence of a specific suspect description."<sup>335</sup> Officers

<sup>332</sup> See Introduction at page 7 for more detail on the Panel's interaction with the POA.

<sup>333</sup> See SFPD Department General Order 5.17, Policy Prohibiting Biased Policing (Rev. May 4, 2011).

<sup>334</sup> See *id.* at 1.

<sup>335</sup> See *id.* at 1 § I.

are forbidden from relying on race or other identity characteristics in conducting stops or detentions “except when engaging in the investigation of appropriate suspect-specific activity to identify a particular person or group.”<sup>336</sup> Section II(B) in DGO 5.17 on “preventing perceptions of biased policing” is limited to advising officers to be courteous and professional when stopping a person, to detain no longer than necessary, and to answer any questions.<sup>337</sup>

- DGO 11.07, Prohibiting Discrimination, Harassment and Retaliation, prohibits discrimination against one department member by another (sworn and civilian) and was last updated on May 6, 2009.<sup>338</sup> DGO 11.07 defines “discrimination” as adverse employment action.<sup>339</sup> Harassment is defined as unwelcome, offensive, or intimidating conduct that is directed at an individual or a group of individuals because of one or more protected categories; it must be severe or pervasive enough to create a hostile working environment.<sup>340</sup> DGO 11.07 prohibits retaliation for protected conduct.<sup>341</sup>

## Findings

### **1. While witnesses unanimously agreed that individual bias exists, a segment of SFPD officers claim there is no systemic or institutionalized bias within the department.**

Witnesses provided different accounts of the presence of bias in the SFPD. Some witnesses, such as those whose interviews were suggested and facilitated by the POA, stated categorically that no institutional or widespread bias exists within the department, though these witnesses stated individual officers or “bad apples” sometimes engaged in biased conduct.<sup>342</sup>

Typically, witnesses who believed that no generalized racial or other bias exists within the department stated that while some bias is present, it is not widespread, rampant, or systemic.<sup>343</sup> For example, a current Black lesbian officer, in an interview arranged by the POA, stated that she has not seen any bias at work and she does not believe bias is institutionalized in the SFPD. These witnesses generally provided two explanations for their beliefs.

The primary reason provided by several witnesses for their belief that no bias exists within the SFPD was the diversity of personnel within the department. These witnesses apparently believed that institutionalized bias could not exist in the presence of a diverse workforce. For example, one current officer, also a defense representative for officers facing citizen complaints, stated that investigators for the Office of Citizen Complaints considered the diversity of a group of officers as evidence tending to disprove bias where one of the officers faced a discrimination complaint; the officer also stated that in his view, a diverse group of officers simply would not act in a biased manner. Some officers who believed diversity was incompatible with bias explained the racial disparities within the city’s arrest and detention statistics by reference to the “criminal element,” alleging without evidence that persons of certain identities simply committed more crime.

<sup>336</sup> See *id.* at 2 § II(A)(2).

<sup>337</sup> See *id.* at 2 § II(B).

<sup>338</sup> See SFPD Department General Order 11.07, Prohibiting Discrimination, Harassment, and Retaliation (Rev. May 6, 2009).

<sup>339</sup> See *id.* at 2 § I(A).

<sup>340</sup> See *id.* at 2 § I(B).

<sup>341</sup> See *id.* at 3 § I(C).

<sup>342</sup> The “rotten apple” explanation—that the officers expressing bias are rogue and in the minority—has frequently appeared in discussions of the SFPD over the past year. This explanation has been criticized by leading criminal justice scholars, who argue that “patterns of misconduct are ultimately the result of inadequate management policies and practices.” They argue that where individual “bad” cops act with impunity, the entire ecosystem is infected—it is a “rotten barrel” rather than “rotten apples.” See Samuel Walker & Morgan Macdonald, *An Alternative Remedy for Police Misconduct: A Model State ‘Pattern or Practice’ Statute*, 19 Geo. Mason U. Civ. Rts. L.J. 479, 483-84 (2009) (citing Samuel Walker, *The New World of Police Accountability* 14 (Sage Publications 2005)).

<sup>343</sup> One current officer, whose interview was mediated by the POA, stated unequivocally that he has seen no bias in the police force at all, ever.

These witnesses claimed that officers only care that you wear a uniform, not what race you are. A current officer whose interview was suggested and arranged by the POA described the department as a diverse “melting pot” where officers and staff did not have problems working with each other because of race; he further stated that he had never heard any racial slurs about Black or LGBT people. However, later in his interview, the same officer stated that racist language, while not appropriate for the “streets,” could be appropriate for use between partners in their patrol cars. The officer further stated that “you’re not going to find someone brave enough to hang a noose on someone’s locker or put a swastika on it.”

The second justification these officers generally provided for their belief that institutionalized bias did not exist within the department was related to the POA’s financial grants to diverse community groups. These witnesses believed that the POA’s donations to communities of color disproved the idea that institutionalized bias could exist within the department. For many years, the POA has given thousands of dollars to community organizations, and in 2015, the POA established a fund that allowed community organizations to apply to the POA for grants.<sup>344</sup> In his January 2016 letter to Sergeant Yulanda Williams objecting to her testimony before the Panel,<sup>345</sup> as printed in the February issue of the *POA Journal*, POA President Martin Halloran cited community grants as strong evidence of the POA’s outreach to minority communities.<sup>346</sup> Current officers whose interviews were suggested and arranged by the POA highlighted these donations as evidence that the POA cares about and is engaged with communities of color. One officer stated that because Sergeant Williams had received money from the POA for community activities, it was hypocritical for her to now call the POA racist.

Officers whose interviews were suggested and arranged by the POA also expressed satisfaction with the POA’s decision to publish the above-referenced letter sent to Sergeant Williams. Some witnesses stated that they “had no problem” with the letter or its publication. One Black officer whose interview was suggested and arranged by the POA stated that the letter was “great” and “cleared up several facts.” The officer did not view the letter, or its publication, as retaliatory, and stated that the POA’s conduct did not make her nervous about speaking out. A Latino officer whose interview was suggested and arranged by the POA stated that the letter and its publication were appropriate based on Sergeant Williams’ allegations in her testimony, which were “unfair” to the POA. The officer stated that Sergeant Williams “has her own agenda” and that members of her organization (OFJ) disagreed with what she said.<sup>347</sup>

Most witnesses who stated their belief that there was no systemic racial bias in the department also made allowances for racist conduct they had observed. One current officer whose interview was suggested and arranged by the POA denied widespread racial bias in the department, describing a hypothetical situation in which a White officer responded to a call for service involving a Black suspect, and then made derogatory comments about that suspect. The officer concluded, “of course there’s going to be some bias when officers respond to different calls.” A recently retired SFPD officer stated “I can say with confidence that there is no racism in the police department, but there are members who are racist.”

In a POA opinion piece, POA President Martin Halloran admitted that bias is present in the department, but his response to the issue was that there is bias everywhere, including in the offices of the Public

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<sup>344</sup> See S.F. Police Officer’s Ass’n (“SFPOA”), 47(8) *POA Journal* 10 (Aug. 2015), [http://sfpoa.org/journal\\_archives/POAJournal\\_August2015.pdf](http://sfpoa.org/journal_archives/POAJournal_August2015.pdf) (announcing establishment of the Community Investment Grant initiative).

<sup>345</sup> See Introduction at page 9 for details about the letter.

<sup>346</sup> See SFPOA, *Outbox*, 48(2) *POA Journal* 6 (Feb. 2016), [http://sfpoa.org/journal\\_archives/POAJournal\\_February2016.pdf](http://sfpoa.org/journal_archives/POAJournal_February2016.pdf) (“[T]he POA repeatedly sponsored youth from the Bayview/Hunters Point to travel to West Africa to explore their heritage: was an annual sponsor of Live Free through the Omega Boys Club headed by Dr. Joe Marshall; has continued to sponsor Blessings in a Backpack which provides nutritious lunches to school children in Visitation Valley; and most recently, afforded our first Community Grant to Hunters Point Family to support their community garden. These are just a few of our outreach services to the minority community and you personally sent me an email on September 9, 2015 commanding the POA for assisting our financially challenged community.”).

<sup>347</sup> The current and former OFJ members with whom we spoke did not confirm this statement.

Defender and District Attorney.<sup>348</sup> Halloran further characterized statements by city agencies regarding racial bias in the department as politically motivated.<sup>349</sup> In another piece, he interpreted almost any statements about potential bias in the SFPD as “anti-law enforcement” and seemed to treat them as personal insults levied at him and at SFPD officers.<sup>350</sup>

Several POA-suggested witnesses, including one female officer, claimed that there was no bias against women in the department. One of these witnesses, a current officer, stated that he had never, in any instance, seen women being treated differently than their male counterparts. He stated further that while he had seen derogatory comments to or about women, these comments were usually exchanged by women who knew each other. He stated that when he heard women calling each other the “B-word,” the women involved were good friends with each other.

Likewise, some POA-suggested witnesses—including one lesbian officer—denied any sexual-orientation bias within the department. One officer stated that LGBT officers—like female officers—were judged on how hard they worked rather than on their sexual orientation. The same officer stated that while he had heard jokes or disparaging remarks involving LGBT colleagues, these comments usually occurred within the context of a relationship (e.g., a friendship) that one gay officer had with another officer.

Regarding reactions to the text messages that sparked this investigation, some witnesses stated that they were “shocked” by these text messages and had no explanation for them. They stated that they knew the officers who composed and sent the texts, and that they never would have known that these officers would engage in this type of conduct. One current officer stated that he was surprised both that the officers were comfortable using the language in the messages and that the officers were able to keep their views hidden for so long. This officer was unable to reconcile the content and distribution of the texts with an earlier statement that there is no widespread racial bias in the department.

## **2. Several SFPD officers and other witnesses believe that systemic and institutionalized bias is widespread in the department.**

Other witnesses, such as OFJ President Sergeant Yulanda Williams and the confidential witnesses who are current SFPD officers, stated categorically that widespread institutionalized and systemic bias exists within the SFPD. These witnesses experienced or observed numerous instances of unfair or discriminatory treatment that led them to this belief.

A Black, female SFPD officer stated that when she joined the department, she felt isolated among her classmates and, later, her colleagues, because of the “clear divide between White and Black cadets.” This witness stated that when she joined the department, some senior officers told her that she would not be treated fairly because she was a Black woman. Initially, she did not believe them, but over time she saw “glaring” differences in the treatment of officers based on race. The witness stated further that while there were some older White officers who understood the issues of racial discrimination within the department, officers of color and White officers did not generally agree on whether racism existed. How officers were treated, disciplined, and even spoken to by supervisors differed based on race; one witness stated that Black SFPD officers were not respected unless they “play[ed] ball a little bit.”

Two current SFPD officers perceived that Black officers were more harshly disciplined than their White colleagues, pointing to “Videogate” as an example, noting that the Black officer involved received 365 days off without pay, though he only appeared in and did not produce the videos.<sup>351</sup>

<sup>348</sup> See, e.g., SFPOA, *Enough! The Anti Law Enforcement Bandwagon Is Overcrowded*, 47(7) POA Journal 1 (July 2015), [http://sfpoa.org/journal\\_archives/POAJournal\\_July2015.pdf](http://sfpoa.org/journal_archives/POAJournal_July2015.pdf) (“The common denominator is that we are all human and prone to make mistakes.”).

<sup>349</sup> Id. (“They paint all of the SFPD with a broad brush then, try and grab their 15 minutes of fame on the backs of the hard working, dedicated, and committed members of the SFPD.”).

<sup>350</sup> See SFPOA, 2015: A Recap, 47(12) POA Journal 1 (Dec. 2015), [http://sfpoa.org/journal\\_archives/POAJournal\\_Deember2015.pdf](http://sfpoa.org/journal_archives/POAJournal_Deember2015.pdf) (stating that during 2015, “various city organizations” “tried to pass baseless resolutions painting all members of the SFPD with the broad brush of racism. Of course, this was baseless, unfair, and offensive.”).

<sup>351</sup> See Appendix B for more on Videogate.

One witness gave two additional examples of differential disciplinary standards. First, according to the witness, a Black officer was found to have arranged exoneration from charges (i.e., "fix[ed] tickets") for people, sometimes at the request of the officer's superiors. As discipline, the officer received a six-month suspension without pay, while other (White) officers involved in the scheme received no punishment. Second, a witness recalled a White officer who beat up a handcuffed detainee and was demoted by Chief Fong, but re-promoted by Chief Suhr.

Some witnesses stated that women have faced bias in the department. One retired officer still involved with OFJ stated that when women first joined the department, they were not perceived as equal, and the first Academy class of women had to fight to keep their jobs because of the stigma of women "doing a man's job"; some had a tough time making it through probation. According to this officer, there is still a small percentage of male officers who believe that women do not belong in police work. A current SFPD officer who spoke on condition of confidentiality stated that she encountered significant discrimination based on her gender, race, and age. She stated further that the SFPD "break[s] down your self-confidence a little bit at a time" as an institutional weapon to ensure that certain officers are promoted and other officers are kept in place through isolation. The witness believes that this conduct is malicious, methodical, and systemic.

Some witnesses stated that while they found the text messages that gave rise to this investigation hurtful, they were not surprised by them. A high-level confidential witness with former ties to the SFPD opined that the text messages were "more of the same thing" and that they showed officers failing to "learn their lesson" from previous scandals. A current officer expressed surprise that officers had documented their obviously biased views by using text-messaging, but was not surprised by the sentiments expressed.

A current Black SFPD officer was shocked and upset when he heard about the text messages. The witness stated the officer was "really cool" with two officers involved in the text message scandal and that they were "regular guys," but that some of the Textgate officers were known to be "shady." The witness further stated that there may be a split between how White and Black officers perceived officers' intentions behind the racist text messages. According to the witness, many White officers expressed that "those guys were just joking, they're not that serious." The witness further remarked that Black officers in the SFPD already did not receive respect, and that was now exacerbated by his uncertainty about whether White officers saw him as a "monkey."<sup>352</sup>

With respect to the department's handling of the texting scandal, one witness described former Chief Suhr's conduct as allowing Textgate to "fester" by placing the officers on paid administrative leave instead of immediately recommending that they be terminated (while only the Police Commission, not the Chief, has the power to terminate officers, the Chief can recommend termination to the Commission). The witness noted that (on account of the ongoing litigation regarding the Chief's attempt to terminate and discipline these officers) the leave has extended past a year, a "total waste of city funds" that has shaken the trust of officers and the public. A city official could not understand why someone who would make such derogatory comments about people would be a police officer.

A current officer reported that Textgate caused her to fear for her safety because the SFPD's reaction was inadequate. In her opinion, the text messages—especially those which targeted specific members of the department—amplified the fears of officers of color that there would be retribution for speaking out about discrimination because the officers involved were not immediately terminated. According to this witness, the way the texting scandal was handled reduced the likelihood that officers of color would report bias within the department.

A current Black officer noted that an officer who was involved in Textgate has been on paid administrative leave for a year. The Black officer noted further that the officer had several other prior incidents in his file, including use of the "N-word." Yet the offending officer was moved from investigations

<sup>352</sup> "Monkey" was a racial slur used against OFJ President Sergeant Yulanda Williams in one of the text messages.

to night captain, where he made more money (via the night differential). Although the witness cited no substantiating evidence, the witness perceived that the failure to timely disclose the texting events constituted a "cover-up" on the part of the department, motivated in part by this officer's involvement. The witness said that the SFPD's favorable treatment of the officer was very unfair to other officers.

Witnesses who believed institutionalized bias exists in the department reacted negatively to the POA's published letter to Sergeant Williams following her public testimony to the Panel, during which she described how she felt ostracized from the department's majority culture which, according to Williams, tolerated officers who held discriminatory views. Former Chief Suhr also stated that the POA should not have sent the letter, and that he reached out to Sergeant Williams to ask whether she wanted to be transferred. A Black officer (who agreed to be interviewed specifically because of the POA's treatment of Sergeant Williams, but requested confidentiality) was disturbed by the POA's letter. She stated that it created a hostile work environment that humiliated Sergeant Williams and enabled other officers to "laugh at her." The officer stated that the letter was "outrageous" and was a "poorly written letter with no facts."<sup>353</sup> Another Black officer stated that she agreed with Sergeant Williams' statements to the Panel. The witness stated that she was afraid for Sergeant Williams and believed Williams was not getting the protection she needed because the POA was angry about her statements. The witness stated further that she was not the only person in the SFPD who agrees with Sergeant Williams, but officers were not coming forward because they knew that if they publicly agreed, they would be ostracized.

Former Chief Suhr, while declining to opine on whether there was systemic bias in the SFPD, stated that Sergeant Williams was not alone in her belief that systemic bias existed, and that there must have been "something" in the culture that caused officers to feel as she felt. Suhr disagreed with the POA's rejection of any claim of bias in the department, stating his belief that it was honorable to recognize bias, and that while we all had bias, officers needed to be able to set that bias aside when policing to be objective.

After the Mario Woods shooting, Suhr stated that racial bias existed in the department.<sup>354</sup> In his testimony before the Panel, Suhr attested that while there were "bad apples" in the department, there was no systemic bias. And in the wake of the release of a second set of explicitly biased text messages, after his interview with Panel representatives and after his testimony before the Panel, Suhr recently stated, "[a]s with any big organization, you're going to have people who are not as you would have them be... I think all the men and women who serve this department know I give no quarter to this kind of thing. The message from the top has been clear. This level of intolerance will not be tolerated."<sup>355</sup>

Suhr also expressed his pride in the "Not On My Watch" pledge campaign, which incorporates commitments by officers to report bias and intolerance.<sup>356</sup> All members of Suhr's command staff took the pledge, and cadets will have an opportunity to take the pledge at Academy graduation. Former Chief Suhr planned to invite officers to take or recommit to the pledge each January; he wanted officers to know how serious he was about combating bias. Suhr believed this pledge was a first-of-its-kind effort. One member of the Police Commission stated that taking an oath not to obey the "code of silence"—an informal rule that officers should not report a fellow officer's misconduct—was very significant.

<sup>353</sup> At one point, the letter misspells Sergeant Williams's first name.

<sup>354</sup> Chris Roberts, *After The Mario Woods Shooting, Chief Greg Suhr Pledges To Reform The SFPD*, S.F. Weekly (Jan. 6, 2016), <http://www.sfw.org/2016/01/06/after-the-mario-woods-shooting-chief-greg-suhr-pledges-to-reform-the-sfpd/>. Content?oid=4389642.

<sup>355</sup> Vivian Ho, *New Rash of Bigoted Texts by S.F. Police*, S.F. Chronicle (Apr. 1, 2016), <http://www.pressreader.com/usa/san-francisco-chronicle/2016/04/01/281500750382331>.

<sup>356</sup> The Pledge, and more information about the program, is available at <http://notonmywatch.org/>.

### **3. Officers were reluctant to engage with the Panel for fear of retaliation from the POA and/or SFPD.**

According to some witnesses, the POA and SFPD retaliate against and ostracize those who speak out against the department.<sup>357</sup> Aside from Sergeant Williams, subject matter experts provided by the department, and officers whose interviews were suggested and arranged by the POA, every current officer who was willing to be interviewed by the Panel did so on condition of anonymity—those officers indicated that the reason for requesting anonymity was a fear of retribution by the POA and SFPD. Two current and former SFPD officers refused to engage at all for those reasons. In some cases, officers stated they feared for their physical safety.

A former officer still associated with OFJ stated that officers who spoke out against the SFPD and/or their supervisors were ostracized; isolated; and faced retaliatory actions like frequent transfers, desk duty, and work in undesirable locations or units. As a result, many officers who were otherwise well-intentioned were disincentivized to report misconduct.<sup>358</sup> The officer added that he was aware of officers who did not want to participate in the Panel's investigation because they feared being ostracized or retaliated against if they did so.

Further, several current officers said they feared retaliation for speaking with the Panel—or generally speaking out publicly about the department—in the form of damage to their professional reputations and/or careers (including being precluded from promotions). Another witness who spoke on condition of anonymity stated that if officers stepped out of line, they faced retaliation. She gave the example of field training officers assigned to train the children of a Chief or Deputy Chief facing the threat of retaliation if the training officers failed the trainees.

At least two current officers expressed a fear for the physical safety of themselves and their families, specifically related to their fellow officers potentially not “having their back” during dangerous situations in the field if they spoke out against the department. One witness stated she was afraid both for herself and for Sergeant Williams.

Fear of retribution has the potential to impede the free flow of information, lower employee morale, and worsen working relations within the department. It has no place in a modern police department.

### **4. The SFPD blurs the line between it and the POA, and allows the POA to take on an outsized role inside and outside the department, making it more difficult to address the issue of bias within the department.**

The SFPD is a government agency and the POA is a labor union; each has a role to play with regard to officers and the larger community. But while each claims to be independent of the other, the distinction is often blurred. The way the POA inserted itself between the Panel and the SFPD in this investigation is a prime example of this blurred line. When the Panel's working group on culture reached out directly to a member of the SFPD command staff—at former Chief Suhr's request—and then directly to individual officers to request voluntary interviews, Suhr advised that interviews should be arranged through the POA. The POA's vigorous intervention and the SFPD command staff's acquiescence strongly blur the line between the two organizations.

<sup>357</sup> Claims that the POA retaliates against and ostracizes officers were also supported by the publication of its letter to Sergeant Williams criticizing her testimony before the Panel.

<sup>358</sup> The retired officer illustrated the point with an anecdote now several decades old. When the officer began training, he observed a group of white officers taking Black arrestees to the back of Park Station and beating them. The officer attempted to physically intervene to stop the beating. (Another retired officer confirmed this account.) As a result, the SFPD threatened to bring charges against the officer. Retaliation also included transfer to another station; indefinite desk duty, and assignment to undesirable duties, such as the city jail. The officer was ostracized by other officers as well. This treatment persisted for about 10 years. The officer stated that this treatment resulted because the SFPD could not fire him easily (he had been an officer for more than one year at the time of the incident).

As a result of the nexus between the POA and SFPD, some officers expressed fear of professional or career reprisals from speaking out against the POA. This highlights the extent to which some officers feel the need to advance the interests of the POA in order to advance their own careers within the department, and the extent to which the POA enforces the party line.

A key example very much in the public eye occurred during the pendency of the Panel's investigation. Fellow SFPD officers reported that Sergeant Lawrence Kempinski of Bayview Station had made highly biased and inappropriate statements about Black people and women while in the station. As reported in the press, former Chief Suhr forwarded the relevant information about the incident to the Police Commission for action. Gary Delagnes, former POA President and its current paid consultant, publicly expressed his anger on Facebook, calling the reporting officers "trained snitches." He complained that the department, through the "Not On My Watch" pledge, encouraged officers to turn each other in and declared that the intolerant statements allegedly made were "nothing that would merit" turning Sergeant Kempinski in, and that Sergeant Kempinski was being made a "scapegoat." Delagnes's message was clear: police officers were not supposed to "snitch" on other police officers, especially not for making biased and bigoted statements.<sup>359</sup>

While the POA is ostensibly protecting its members, the SFPD—as a department of city government—is obligated to act in the public's interests. But when former Chief Suhr was asked about the incident related to Sergeant Kempinski at the Police Commission meeting on May 11, 2016, he stated only that "retired sergeants" are "not in his jurisdiction." He failed to note that Delagnes's criticism of "snitches" runs directly counter to the "Not On My Watch" pledge, which Suhr promoted.<sup>360</sup> The "good cops" that, by all reports, make up a majority of the SFPD will never make headway absent more management support for whistleblowers.

## **5. The POA has historically taken positions resistant to reform and insisted that there is no widespread or inherent bias in the department. Because the department has consistently ceded the ground of discourse to the POA, theirs is the dominant law enforcement voice heard on this issue.**

Witnesses reported that the POA has historically not acted to improve race relations and has made statements that have alienated citizens, officers within the department, and others, including officials of some City agencies. They noted that the POA has traditionally been resistant to listening to alternative points of view, whether internal or external. This inability to engage in any critical introspection has hampered transparency and reform within the SFPD. To date, the SFPD has appeared unwilling or unable to take on the POA and to take the necessary steps to combat bias within the department.

According to several sources, the POA's strategy with regard to its culture is twofold, and it stretches back decades. First, the POA portrays all police, and SFPD officers specifically, as free from all bias and unfailingly altruistic. The POA uses several themes to characterize its culture: the SFPD is diverse; the POA supports community activities, including grants to the vulnerable and poor; and POA "outreach to the community is legendary."<sup>361</sup> In doing so, the POA uses absolutes to describe the SFPD that leave essentially no room for potential improvement. For example, "there is no more diverse, culturally enlightened, better trained, and better educated urban law enforcement agency than is the SFPD"; "not a single law enforcement agency in this nation has done more outreach to the community it serves than has the SFPD"; and "there is no more proactive police association than the SFPOA that has done more to seek fair and relevant dialog with the communities served by its members."<sup>362</sup>

359 See Jonah Owen Lamb, *Former Police Union Head Plays Down Latest Racist Allegations in SFPD*, S.F. Examiner, May 10, 2016, <http://www.sfexaminer.com/former-police-union-head-plays-down-latest-racist-allegations-in-sfpd>.

360 The comments should be a cause for alarm. For example, one commenter below Delagnes's Facebook post requested the names of the "snitches" so they could be "taken care of." Another stated, "if they want snitches, this department is doomed." Another characterized the officers who reported the conduct as "childish candy asses." One characterized "sensitivity training" as "bullshit." Perhaps most alarming, another commenter stated, "I hope it doesn't get ugly out there, someone could get hurt."

361 Paul Chignell, *POA Dramatic Defeat of Feinstein Anti-Police Measures in 1985-1986* *Mirror December 2014* *POA City Hall Fight, 47(1) POA Journal 4* (Jan. 2015), [http://sfpoaj.org/journal\\_archives/POAJournalJanuary2015.pdf](http://sfpoaj.org/journal_archives/POAJournalJanuary2015.pdf).

362 Letter from Martin Halloran to Supervisor John Avalos (Dec. 12, 2014), reprinted in 47(1) POA Journal 7 (Jan. 2015).

Second, the POA characterizes those who challenge it—or suggest that there is room for improvement—as misinformed, malicious, untruthful, opportunistic, and anti-police. For example, members of the San Francisco Board of Supervisors advocating a resolution regarding the Michael Brown officer-involved shooting in Ferguson were described as “opportunists” and “ideologues” by past POA President Paul Chignell.<sup>363</sup> According to the *San Francisco Examiner*, which obtained relevant emails, the POA “bullied” several supervisors into changing their votes on the resolution.<sup>364</sup> The lead story in the *POA Journal* each month often portrays city leaders or the public at large who make statements or take actions that are contrary to the POA’s positions as merely politically opportunistic, uninformed, or having an anti-police agenda.<sup>365</sup>

A former high-level SFPD officer attested that in the past, the POA interfered with the SFPD’s investigation and discipline of officer misconduct. As evidence, the witness described circumstances connected to both Videogate and Fajitagate,<sup>366</sup> explaining that a lack of trust between SFPD management and POA leadership impeded the investigations. When Videogate happened, the SFPD tried to aggressively investigate because, among other reasons, those involved were in administrative positions and the videos were made on-duty with SFPD cameras. SFPD leadership learned about the videos through the captain of the station involved in the scandal, after the POA obtained the videos and after the media had accessed them. The POA President at the time initially denied that it had possession of the videos, but when the department insisted, the POA finally produced them.

With regard to the current POA, one public official interviewed by the Panel stated that the POA was “problematic,” its culture was “bad,” and it had taken “damaging” positions on race relations; according to the witness, it would have been “wise” for the POA to not minimize how serious and hurtful the texting scandal was. Another city official stated that the POA Executive Board was very divisive and took on a “my way or the highway” approach. In the official’s view, the POA did not represent its members well, and also did not represent all of its members. The official had the impression that there were no Black members on the POA Board and very few, if any, women involved in the decision-making.<sup>367</sup>

A current officer perceived that the POA was the main obstacle to positive change in the SFPD, as it consistently denied that problems related to racism exist. Though Textgate made these problems visible, the officer continued, no one was disciplined or fired by the SFPD as a result, and therefore Textgate actually diminished the voices of officers of color.<sup>368</sup>

<sup>363</sup> Chignell, *POA Dramatic Defeat of Feinstein Anti-Police Measures*, *supra* note 361, at 4-5.

<sup>364</sup> Jonah Owen Lamb, *Police Union Strong-Arms Board of Supervisors Over Controversial Resolution on Police Brutality Protests*, *S.F. Examiner* (Feb. 12, 2015), <http://archives.stexaminer.com/sanfrancisco/police-union-strong-arms-board-of-supervisors-over-controversial-resolution-on-police-brutality-protests/Content?oid=2920037>.

<sup>365</sup> Martin Halloran, *The Silence Is Deafening*, 48(3) *POA Journal* 1 (Mar. 2016) [http://sfpoa.org/journal\\_archives/POAJournal\\_March2016.pdf](http://sfpoa.org/journal_archives/POAJournal_March2016.pdf) (noting that those who denounced the Mario Woods OIS ignored the fact of ongoing investigations “because [they] did not fit their narratives or political agendas”); Martin Halloran, *The Truth Shall Be Known*, 48(1) *POA Journal* 1 (Jan. 2016) [http://sfpoa.org/journal\\_archives/POAJournal\\_January2016.pdf](http://sfpoa.org/journal_archives/POAJournal_January2016.pdf) (those who disagreed with the SFPD’s initial version of the facts of the Mario Woods OIS did so because “it just does not fit the agenda by some of those holding office, seeking office, or attempting to gain political ground”); Martin Halloran, *Shameful, but not Surprising*, 47(9) *POA Journal* 1 (Sept. 2015) [http://sfpoa.org/journal\\_archives/POAJournal\\_September2015.pdf](http://sfpoa.org/journal_archives/POAJournal_September2015.pdf) (describing those who disagree with law enforcement as a “lynch mob that often reacts on rumors and emotions rather than facts and truth”); Martin Halloran, *The Anti Law Enforcement Bandwagon Is Overcrowded*, 47(7) *POA Journal* 1 (July 2015) [http://sfpoa.org/journal\\_archives/POAJournal\\_July2015.pdf](http://sfpoa.org/journal_archives/POAJournal_July2015.pdf) (“As the anti law enforcement rhetoric continues to flood the media print and airways in this country, and as certain groups and politicians are jumping on this bandwagon to bolster their own status or posture for a possible better political position, some police associations and responsible individuals are saying, ‘Enough is enough.’”); Martin Halloran, *Ambushing the Trust in American Policing*, 47(4) *POA Journal* 1 (Apr. 2015) [http://sfpoa.org/journal\\_archives/POAJournal\\_April2015.pdf](http://sfpoa.org/journal_archives/POAJournal_April2015.pdf) (“The trust in law enforcement, or lack thereof, has been exasperated by those who have alternative motives....”).

<sup>366</sup> See Appendix B for more detail.

<sup>367</sup> Review of the POA website shows at least Clifford Cook, an African-American officer at the Richmond Station, is a member of the POA Board of Directors. Mr. Cook was interviewed by the Culture Working Group at the request of the POA. His interview was attended by a POA representative.

<sup>368</sup> An example that predates the public revelation of Textgate is illustrative on this point. In an article in the *POA Journal* about dangers associated with social media posts and emails, rather than discouraging officers from sending messages that “would not hold up during an IA [Internal Affairs] investigation” at all, the President of the POA told officers to “[e]xercise your [First Amendment] rights by using your personal computers and smart phones for those humorous antidotes [sic]. They will be just as funny.” Martin Halloran, *Mobile Data Devices: Think Before You Post*, 45(10) *POA Journal* 1 (Oct. 2013).

District Attorney Gascón testified to the Panel that the POA was very strong and held too much control over the SFPD. In his opinion, the POA was heavily involved in local politics, very well-funded, had money to help get politicians elected, and its endorsement was highly coveted. As a result, he believed the POA had more political power than its equivalents in other metropolitan areas. DA Gascón further stated his view that some Police Commissioners were “legacy people” who were close to the department and the POA—especially those appointed by the Mayor.

A high-level confidential witness characterized the POA as a “bullying organization” and “frat house” and past heads of the POA as “bullies.” The witness also stated that the POA “doesn’t reflect the diversity of the department.” Instead, according to the witness, the POA worked to advance the needs of a vocal group of insiders.

The POA seemingly disregards community opinion that is not unfailingly pro-police; it describes community members who object to certain police conduct as misinformed, “professional protesters,”<sup>369</sup> race-baiters, or “a small percentage of people who yell the loudest.”<sup>370</sup> The POA consistently rebuts any criticism—real or perceived—by promoting the diversity of the SFPD and its prowess in outreach. It will be difficult to rebuilt trust with critics of the SFPD if this pronounced gap in understanding remains unaddressed.

## **6. Several witnesses stated that the SFPD and POA functioned like a “good old boys’ club,” making it difficult to impose discipline.**

Witnesses inside and outside the SFPD, including one very high-level confidential witness, stated that although the department was diverse in some ways, the culture was dominated by an insular “good old boys’ club” that originated in certain high schools in the city, in particular St. Ignatius, Sacred Heart, and Riordan.<sup>371</sup> In some cases the network reached further back to elementary school and youth sports leagues. Some witnesses stated that officers who did not attend St. Ignatius high school could not reach the inner circles of power in the department.

A high-level confidential witness opined that this insularity resulted in SFPD’s disconnection from the culture and practices of other metropolitan police departments. Compared to other departments, SFPD did not look beyond itself for guidance; rather, the high-level witness stated, it “has its own way of [training] around here.”

Some witnesses noted that while there were more officers of color than there once were, the insularity of the “club” meant that few would be promoted to the higher ranks. One Black officer, after opining that Sergeant Williams’ allegations of bias were rightly understood as related to nepotism rather than racism, further stated that some people in the department received the best assignments because they had known a high-ranking officer all their lives. The officer added that, if he were the boss, he would also give the best assignments to his friends.

One Black officer observed the department hired people who did not understand the importance of building trust with community members, stating “the racist culture is deeply rooted and goes back years and years. The department needs to put some real energy into it, instead of putting a Band-Aid on it. Instead of trying to make real, true progress, they want us to take pictures with the community, hugging kids.” The witness further observed that “the department seems to find the same type of person to do the

<sup>369</sup> See Michael Nevin, *The Big Lie*, 47(1) POA Journal 7 (Jan. 2015), <http://tinyurl.com/yd2jwz6m>; POAJournal\_7.pdf (“Most of the professional protesters—and the politicians who support them—claim to be defending the rights of young urban minorities.”).

<sup>370</sup> Gary Delagnes, *Mario Woods Day: Why We Can’t Let It Go*, 48(3) POA Journal 4 (Mar. 2016), <http://tinyurl.com/yd2jwz6m>; POAJournal\_March2016.pdf.

<sup>371</sup> In reference to the “central” SFPD culture, a San Francisco official stated “they all went to SI [St. Ignatius]. That’s part of the problem. There are so many other high schools in San Francisco. You can diversify these departments by looking at the public high schools in San Francisco. There are lots of folks who grew up in the Western Addition who wanted to be officers, but it’s very challenging. Ultimately the chief decides.”

job—officers who are easily influenced to conform to the existing culture. The norm is to be followers [who do not say anything about misconduct], unless jobs or lives are at risk.”

One witness disagreed and attested that the power of the “club” did not represent the totality of department culture, and its power waxed and waned depending on SFPD leadership. This witness stated that under former Chief Suhr, the “club” had more power than it did during the era of the 1978 Consent Decree or under the chiefs who led the SFPD between 1998 and 2011. The witness opined that the tone of SFPD leadership may shape the limits of authority that the “good old boys” had in the SFPD. For his part, former Chief Suhr, in response to a question about whether a “good old boys” network existed, stated that the SFPD had a culture, as any large organization did—certain people would be closer to certain other people, and not as close to others.

Witnesses also stated that the “club” had consequences for officer discipline. Officers tipped fellow officers off to any threat of disciplinary investigations due to interpersonal relationships. A witness stated that some officers currently felt comfortable with cover-ups because they knew that their friends—whom they grew up with—would be loyal to them. Another high-level confidential witness stated that at least some members of the “club” were involved in the POA and were vocal on issues related to officer discipline before the Police Commission, Chief of Police, and other entities. A current officer had repeatedly seen senior officers retire, only to be replaced by “their next generation”—their children, nieces, etc. whose conduct got “carte blanche because of the relationships their fathers had.”

POA representatives accompany officers who are interviewed as part of a disciplinary investigation. One witness formerly involved in SFPD internal investigations stated that the POA representative would share the officer’s testimony with others who would then be interviewed about the same incident (while officers can be ordered not to share testimony with anyone else, POA representatives cannot be similarly directed). The witness stated that the current system, with trials before the Commission and complaints brought by the OCC, was to the POA’s liking because it was ineffective at actually enforcing discipline.

A former Police Commissioner stated his view that the POA sometimes slowed the disciplinary process down by providing each officer in the same case a unique attorney—thus creating the need to coordinate multiple schedules. Further, the POA sometimes “gummed up the works” to slow the process until the officer in question reached retirement age. Another high-level confidential witness asserted that the POA often sought to delay disciplinary action until the relevant statute of limitations was exceeded—because the POA had more resources to expend on cases than did the Commission, the POA was often successful. As a labor union, the POA is arguably acting in its members’ best interests. But, while available data indicates that the Commission is currently managing its disciplinary docket fairly efficiently,<sup>372</sup> there was a time where neither it nor the SFPD acted to counterbalance the POA in these circumstances, severely hampering the disciplinary process.

## **7. Witnesses perceive that a code of silence and lack of transparency creates a failure of accountability in addressing bias within the SFPD.**

The “code of silence”—informal pressure for officers to “fall in line” and not report observed misconduct—makes it difficult to identify and respond to bias within the department. During the investigation, witnesses strongly expressed that the majority of officers in the SFPD were ethical, good officers who always strove to do the right thing. Officers who fell outside this majority group may lack sufficient training or understanding; lack motivation because of indifference, burnout, or peer pressure; or know their actions are wrong but do them anyway. When the large majority of “good” officers say nothing when they see conduct that violates standards and/or laws, however, there is a widespread, major failure of accountability within the department. As a result, the officers who engage in misconduct continue on their paths with impunity. In turn, this impunity seriously damages the morale of the majority of officers in the department.

<sup>372</sup> See Chapter 5: External Oversight for more detail.

In other words, the conduct of “a few bad apples”—as the officers implicated in Textgate were repeatedly characterized by the POA—inexorably affects the entire department, “spoiling the barrel.”

A city official summarized the situation as follows:

The SFPD protects its own, and that’s part of the problem with the culture. When you’re a good police officer and you see another police officer do bad things [but don’t report it], you’re just as guilty. The culture of not saying anything still exists; you could be ostracized by other members of the department. Why do you expect people in the community to snitch on others—point the finger—when you won’t do it within the department?

## Recommendations

### **1. The SFPD should demonstrate proactive leadership to eliminate bias in the department.**

To have any chance of success, efforts to address bias within the SFPD must be led by the department’s leadership, and communicated “top down” at every level of command to all SFPD officers. Many witnesses viewed the SFPD as “all talk and no action.” Both critics and supporters of the department acknowledged that even when the SFPD says the right thing, it too often fails to take the steps necessary to provide meaningful change within the department. Unless the SFPD is prepared to do so, including reducing the POA’s influence over the department, it is unlikely the SFPD will be viewed as being seriously committed to reform.

As an employer and a municipal agency, the SFPD has obligations to officers and the community that are different from those of the POA. The SFPD should take steps to clarify how its role and positions are distinct from the POA. For example, the SFPD is obligated to provide a work environment that protects against the reality or perception of retaliation for speaking out against bias and should provide a means for officers to speak out, perhaps in the form of an ombudsman.

### **2. The SFPD should make the “Not On My Watch” pledge mandatory and enforce the pledge.**

Currently, the “Not On My Watch” pledge, which is in part a promise to report wrongdoing, is only voluntary. Because the pledge essentially articulates a commitment to current SFPD policy as articulated in DGOs, the department should make the pledge mandatory. Likewise, because the pledge promises adherence to what are already requirements for officer conduct, the SFPD should enforce it and provide relevant periodic reports to the Police Commission.

### **3. The Police Commission should review current implicit-bias training within the SFPD and recommend additional or different training where appropriate.**

The Police Commission should review current training on implicit bias and, where appropriate, require additional—or different—training. Implicit-bias training is currently provided only to command staff. Former Chief Suhr promised to provide it to all officers by the end of 2016. The Commission should ensure that this happens, that the training is appropriately extensive, participatory, informative, and that its effectiveness is evaluated.

### **4. The Police Commission should engage an outside entity to further investigate the presence of bias within the SFPD.**

While officers whose interviews were suggested and arranged by the POA denied the existence of institutionalized bias within the department, several officers and other witnesses testified to the opposite. A survey of SFPD officers should be conducted by an outside entity/organization regarding issues of racial and other biases, both internal to the department and external regarding interactions with the community. The Police Commission should engage an expert in implicit bias to study the SFPD “system” and determine to what extent implicit or systemic bias affects outcomes.

**5. The Police Commission should require the Chief of Police to regularly meet with all affinity groups in an effort to enhance communication and access to information.**

Witnesses testified that as part of the SFPD's compliance with the consent decree, past SFPD chiefs used to meet with representatives of all the Police Employee Groups (PEGs), including affinity groups such as OFJ and Pride Alliance. Later, chiefs sent deputy chiefs rather than attending themselves, and apparently the meetings ultimately died out. Bringing back these meetings and requiring the Chief to attend in person would improve communication, flow of information, and mutual respect and trust.

**6. The SFPD should form a community networking group to meet with the POA and the Police Employee Groups.**

To increase communication with communities and make the department more transparent, the SFPD should form a community networking group by recruiting key community stakeholders. This group should meet with the POA and the PEGs at least on a quarterly basis to encourage transparency in policing, open discussion of community issues, and to identify and address problems of concern.

**7. The Police Commission should engage an outside entity to examine the SFPD's hiring statistics in order to better understand the extent to which nepotism, favoritism, and the "good old boys' club" affect hiring and promotions within the department.**

A variety of opinions exist with regard to whether nepotism and the "good old boys' club" actually influence the workings of the SFPD. More investigation is needed to understand the situation. In so doing, the Police Commission should engage an outside entity to thoroughly review the department's records on hiring and promotion to discover the extent to which SFPD officers come from certain schools, are related to current officers, are family friends of the Chief, etc. If these allegations turn out to be true and influential, the Commission should make the hiring process transparent and consider changing the relevant control mechanisms.



# Chapter 8:

# Crime Data

## Background

The Panel initially sought to investigate whether there was evidence of bias in clearance rates for crimes reported by the SFPD—that is, did clearance rates reported by the SFPD reveal bias depending on the race, ethnicity, or sexual orientation of the victim or perpetrator of the crime? Preliminary research revealed, however, that available data could not provide a statistical basis for answering this question. The data made publicly available by the SFPD—which, in this respect, appeared to be typical of other police departments—did not match crime clearance information with demographic information of crime victims or perpetrators. Accordingly, the Panel looked more closely at the SFPD’s policies and procedures regarding collection, analysis, and publication of crime data.

This chapter provides a high-level summary of the SFPD’s data practices and procedures. Other chapters of the report provide additional detail on particular aspects of SFPD data collection, analysis, and dissemination that bear directly on bias, such as stop, search, and arrest data and use-of-force data.

### Crime Data Collection

The SFPD currently uses two principal systems for compiling crime data. First is its legacy Computer Assisted Bay Area Law Enforcement system, which was initially implemented by the department in the 1970s. To enter data into CABLE, incident reports—which are created at district stations—are printed, driven down to the Hall of Justice, and manually entered by department employees. As a result of this multi-step process, various crime data are entered into CABLE two to three days after they are filed, and on rare occasions not entered for several weeks.<sup>373</sup> The data entered into the system is sometimes inaccurate because of the highly manual entry process and the fact that the data is entered by a group of poorly compensated employees who frequently turn over, or poorly motivated officers who have been removed from the field.

In summer 2012, the SFPD introduced the Crime Data Warehouse (CDW), a cloud-based system that permits officers to enter and share data more easily. This system, developed by Oracle, houses incident reports, including some (but not all) crime data from the legacy CABLE System. CDW has a number of functions that are great improvements over CABLE. Calls for service to San Francisco’s 911 system are mapped instantly in the database. Officers can create incident reports through a web-based portal, either at stations or on their smartphones, which can be instantly viewed by other officers (after the officer-in-charge electronically signs the report). CDW permits officers to search for crimes by location or search for

<sup>373</sup> Memorandum from Corina Monzón, et al., Office of the Controller, City and County of San Francisco, to Greg Suhr, Chief SFPD, entitled *CompStat Review* (Jan. 20, 2012), [http://sfccontroller.org/sites/default/files/FileCenter/Documents/2878-SFPD\\_CompStat\\_Memo\\_FINAL.pdf](http://sfccontroller.org/sites/default/files/FileCenter/Documents/2878-SFPD_CompStat_Memo_FINAL.pdf) at 8.

people by a number of different fields. Officers can access or search CDW from any computer terminal or smart phone that is connected to the Internet, permitting them access to CDW's data even when they are in the field.<sup>374</sup> CDW can create customized reports, allowing captains to better understand crime trends in their districts. Despite these great improvements, the department has continued to use the legacy CABLE system to this present day, primarily because other agencies, such as the court system, continue to use and rely on it.

The SFPD is currently piloting a smart phone app that allows officers to record citations on a smart phone. The department has plans to expand the functionality of this program to allow certificates of release from detention and field interview cards to be entered on smart phones as well.<sup>375</sup> The SFPD plans to require citations to include race and ethnicity information.

### **Crime Data Analysis**

The primary way that the SFPD analyzes its crime data is through the Compstat process. Compstat—short for “computer statistics”—is a system used to “reduce crime and achieve other police department goals” through “information-sharing, responsibility and accountability, and improving effectiveness.” Compstat has four central elements: (1) timely and accurate information, (2) rapid deployment of resources, (3) effective tactics, and (4) follow-up.<sup>376</sup> While the specific contours of a Compstat program may vary from department to department, the core concepts are to use data to identify problems, redeploy resources to respond to those problems, and then empirically evaluate the effectiveness of these efforts.

In 2009, under the direction of newly-appointed Chief George Gascón, the SFPD began implementing a Compstat program. Gascón—a former assistant chief in the Los Angeles Police Department—hired Jeffrey Godown, a then 29-year law-enforcement veteran who ran the LAPD Compstat program.<sup>377</sup> Godown was tasked with developing a Compstat system for the SFPD that would be modeled on the Compstat program implemented by the LAPD.

The SFPD houses its Compstat unit within its Crime Analysis Unit (under the Planning Division) and implements it through monthly meetings. Commanders, district captains, and other officers attend these meetings, which are open to the public. For each district, the commanders review crime statistics from the prior month and ask each captain about crime trends and what he or she is doing to address them. The questions the commanders asked are often quite specific and at times pointed. Commanders ask about specific types of crimes, specific streets where crimes occur, and specific trends that stand out to them. The captains have to offer explanation for the identified trends in some detail, and often address questions with specific strategies aimed at addressing their commanders' concerns.

### **Crime Data Dissemination**

The SFPD recently started to publish a variety of different sets of crime data on its website. First, the department published data that are reviewed at its monthly Compstat meetings.<sup>378</sup> These reports provide

<sup>374</sup> See generally, Susan Merritt, *New Techs. Deployed by the San Francisco Police Dep't* (Nov. 2014) (“Merritt Presentation”), [http://teforum.apcollaboratory.org/wp-content/uploads/2\\_Merritt\\_SFPPD\\_ETF114.pdf](http://teforum.apcollaboratory.org/wp-content/uploads/2_Merritt_SFPPD_ETF114.pdf).

<sup>375</sup> San Francisco Police Dep't, Final Report of the President's Task Force on 21st Century Policing (Sep. 2015), [http://sanfranciscopolice.org/sites/default/files/FileCenter/TaskForce/CTSP/SFPPD%20Final%20Report%202015\\_09\\_22.pdf](http://sanfranciscopolice.org/sites/default/files/FileCenter/TaskForce/CTSP/SFPPD%20Final%20Report%202015_09_22.pdf).

<sup>376</sup> This description of Compstat is derived from interviews and from the Police Executive Research Forum's paper: Police Executive Research Forum, *Compstat: Its Origins, Evolution, and Future in Law Enforcement Agencies* (2013), [http://www.policeexecutive.org/assets/docs/Free\\_Public\\_Documents/Compstat/20\\_Origins\\_Evolution\\_and\\_Future\\_in\\_Law\\_Enforcement\\_Agencies\\_2013.pdf](http://www.policeexecutive.org/assets/docs/Free_Public_Documents/Compstat/20_Origins_Evolution_and_Future_in_Law_Enforcement_Agencies_2013.pdf).

<sup>377</sup> Bratton was a pioneer of crime analysis, creating the first Compstat program in New York in 1994. David Weisburd, et al., *Reforming to Preserve: Compstat and Strategic Problem Solving in American Policing*, 2 Criminology & Pub. Pol'y 421 (2002), [http://scholarship.rutgers.edu/research/viewco\\_item.cgi?item\\_id=1062&path\\_id=1](http://scholarship.rutgers.edu/research/viewco_item.cgi?item_id=1062&path_id=1) at 422.

<sup>378</sup> Compstat Reports, San Francisco Police Dep't (May 25, 2016, 1:22 PM), <http://sfpolice.org/compstat-reports>.

year-over-year and month-over-month statistics on what the U.S. Department of Justice defines as "Part I" crimes: homicide, rape, robbery, aggravated assault, burglary, larceny theft, motor vehicle theft, arson, and certain forms of human trafficking. These reports merely describe the number of crimes committed in a given month, and do not contain data about crime clearance, crime location within the city, or the demographics of the victim or perpetrator.<sup>379</sup>

Second, the SFPD publishes a fairly detailed set of information on San Francisco's OpenData website,<sup>380</sup> which contains a map of all reported crimes in San Francisco since 2003—the map can be filtered to display the results by date or type of crime.<sup>381</sup> The SFPD's website also contains a link to a third-party website that also maps San Francisco crime data.<sup>382</sup>

Third, the SFPD publishes the data that it reports to the FBI for inclusion in the nation's Uniform Crime Reports (UCR).<sup>383</sup> UCR is the primary tool that the FBI uses to compile and compare nationwide trends in crime. This data is limited to "Part I" crimes, the same set of crimes included in the monthly Compstat reports. The SFPD also reports a similar set of data to the California Department of Justice on a monthly basis.<sup>384</sup>

At the direction of Mayor Lee, the department recently joined the White House Police Data Initiative—a project to realize the data and technology-related recommendations of the White House Task Force on 21<sup>st</sup> Century Policing. Goals of the Police Data Initiative include increasing transparency and accountability and building community trust. Thus far, the department has posted only aggregate statistics as part of this initiative, including employee demographics, total numbers of officer-involved shootings, and racial data regarding traffic stops.<sup>385</sup>

## Findings

### **1. The SFPD's data collection practices and data quality have been criticized in the past, and the extent to which they have improved is unclear.**

Collecting and maintaining accurate data is an essential first step toward transparency, yet indications of the department's questionable data collection practices persist. Gascón noted that when he was first appointed Chief, he had to weigh whether to improve the SFPD's antiquated data systems before implementing Compstat because decision makers may have misallocated police resources if the data that went into the Compstat process was inaccurate. While CDW is unquestionably an improvement over CABLE, data quality may remain an issue.

Former Chief Greg Suhr asked the Office of the Controller to conduct a review of the department's Compstat program in 2011. The Controller published an extensive report in January 2012, finding a number of data quality issues. The data was inaccurate because it was fed into the Compstat process from "disparate data sources," and data entry was "prone to error due to manual processes, lack of training,

<sup>379</sup> The SFPD also publishes a monthly report of traffic violations. See *Traffic Stats* (May 25, 2016, 1:22 PM), <http://sanfranciscopolice.org/traffic-stats>.

<sup>380</sup> Public Safety, City and County of San Francisco (June 21, 2016, 12:57 PM), <https://data.sfgov.org/browse?category=Public-Safety>.

<sup>381</sup> Map: *Crime Incidents – from 1 Jan 2003* (May 25, 2015, 1:28 PM), <https://data.sfgov.org/Public-Safety/Map-Crime-Incidents-from-1-Jan-2003/xxqa-x39z>. Another page on this website lists all reported crimes since January 1, 2003 in a table that the user can sort by a number of different variables. See *SFPD Incidents – from 1 January 2003* (May 25, 2016, 1:28 PM), <https://data.sfgov.org/Public-Safety/SFPD-Incidents-from-1-January-2003/tmtv-yvyy>.

<sup>382</sup> Crimemapping, <http://www.crimemapping.com/map/agency/334> (June 24, 2016, 6:01 PM), Crimemapping.com represents that it extracts data from the SFPD's records "on a regular basis," indicating the SFPD has a relationship with the site. See <http://www.crimemapping.com/about>.

<sup>383</sup> See *UCR*, San Francisco Police Dep't (May 25, 2016, 1:22 PM), <http://sanfranciscopolice.org/UCR>.

<sup>384</sup> Office of the Cal. Atty' General, Criminal Statistics Reporting Requirements (Apr. 2014), <https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/rptreq.pdf>.

<sup>385</sup> Data, San Francisco Police Dep't (May 25, 2016, 2:01 PM), <http://sanfranciscopolice.org/data>.

and high staff turnover." It also found that the reporting of Part I data in the SFPD's UCR reports did not match the reporting of Part I data in its Compstat reports when the figures should have been "relatively comparable."<sup>386</sup>

The report identified more than 100 recommendations that could improve data quality, including a number of recommendations concerning the department's then-forthcoming implementation of the Crime Data Warehouse. In an interview, Susan Merritt, Chief Information Officer of the SFPD, attested that she maintained a personal spreadsheet to keep track of progress with regard to these recommendations, but the Panel could not find any public report that kept track of progress made on these recommendations. According to the Controller's Office, the SFPD recently requested a follow-up review of its data practices.

There are indications that discrepancies in crime data remain. In May 2016, the DA sent a letter to former Chief Suhr pointing out that the SFPD reported two different sets of crime statistics for 2015 and requesting a meeting to discuss the SFPD's crime data methodology. Former Chief Suhr responded several days later, agreeing to meet with the DA but not providing any comprehensive answer for the different figures that the DA noted.

**2. The Compstat process focuses on crime statistics, but not accountability.**

The Compstat process is a means for the SFPD to analyze crime data and deploy resources. It provides a forum for the public to hear about trends in crime, as well as an opportunity for captains to share information and ideas with each other. Critical to any Compstat process, however, is a focus on accountability. While commanders may ask captains to explain crime statistics from their districts during public meetings, a formal or systematic evaluation of past initiatives is seemingly outside the scope of the department's current Compstat practices.

**3. The SFPD's public reporting of crime data has become less robust, frequent, and detailed over the past five years.**

As of May 25, 2016, the SFPD's website contained monthly Compstat reports going back to October 2015, but no reports for the months May 2014 through September 2015. Furthermore, more recent Compstat reports only provided information on a city-wide basis. This was not always the case—Compstat reports from 2009 through May 2014 contained district-level detail, and some contained information on crimes other than Part I crimes. Not publicly reporting aggregate crime data by district prevents the public from assessing whether crime data in areas with larger populations of color is in line with crime trends in other areas. Similarly, by reporting aggregated crime data, the department prevents the public from assessing whether crime is increasing or decreasing in their particular community.

Further, there are reports that the crime data that is made public by the department is sometimes not published on a timely basis. For example, a December 2015 San Francisco Examiner article revealed that the SFPD had not published Compstat reports since the summer, and had actually removed certain data from prior time periods from its website.<sup>387</sup>

<sup>386</sup> Memorandum from Corina Monzón, et al., Office of the Controller, City and County of San Francisco, to Greg Suhr, Chief SFPD, entitled CompStat Review (Jan. 20, 2012), <http://www.sanfranciscocontroller.org/Office-of-the-Controller/CompStat-Review>.

**387 Jonah Owen Lamb and Michael Barba, SF Police Refuse to Release Damning Crime Stats.** S.F. Examiner, Dec. 6, 2015. [sfexaminer.com/police-refuse-to-release-damning-crime-stats](http://sfexaminer.com/police-refuse-to-release-damning-crime-stats)

## Recommendations

### **1. The SFPD should take steps to ensure the accuracy of its crime data and its data practices and quality should be regularly audited.**

The SFPD should phase out obsolete systems—such as the legacy CABLE system—given that the reporting of crime information into that system is laborious, prone to inaccuracy, and duplicative of the data reported to the Crime Data Warehouse. It should also adopt internal guidelines that provide rules, processes, and procedures to guide department employees' input and reporting of crime data and prioritize the hiring of non-sworn personnel with technology backgrounds to assist in the implementation and development of the aforementioned guidelines.

The SFPD's data collection practices and data quality should also be subject to a regular audit. Given the central importance of accurate data to properly allocate resources, evaluate effectiveness, and monitor potential bias and other impropriety, an external entity should act as the auditor.

### **2. The SFPD should take steps to improve its Compstat process.**

The department should adopt a policy that outlines its stated goals in implementing a Compstat process and secures the commitment of both command staff and rank-and-file officers to take efforts to ensure the success of the Compstat process. This includes prioritizing the timely and accurate collection of crime data, publicizing its monthly Compstat meetings, and providing the public with crime data that permits it to assess whether the department's policing efforts have been successful. Captains should be assessed on what they are doing to establish and develop community-policing partnerships and problem-solving strategies to combat specific trends in their districts, and commanders should then follow-up in future Compstat meetings to ensure that the measures taken generate results. The department should also consider evaluating data related to biased policing in Compstat meetings.

### **3. The SFPD should make crime data regularly available to the public.**

The department should make crime data available on a monthly basis—at a minimum. The data should be tied to specific communities, districts, and/or divisions so that the public may assess the efficacy of policing efforts in particular neighborhoods. The data collected and released should include demographic information sufficient to track evidence of potential bias. It should also aim to achieve the goals represented by the department's commitment as part of the White House Police Data Initiative—increasing transparency and accountability and building community trust.

# Appendix A:

## List of All Findings and Recommendations

### Findings

#### **Stops, Searches, and Arrests**

1. The San Francisco Police Department's (SFPD's) stated policies prohibiting biased policing are in line with best practices.
2. Available statistics indicate racial disparities in SFPD stops, searches, and arrests.
3. Community members and others have experienced bias in SFPD stops, searches, and arrests of people of color.
4. Community members have expressed concern that the SFPD does not engage in community policing.
5. The SFPD may use confrontational and intrusive policing tactics in certain neighborhoods.
6. The SFPD's current traffic stop data collection program is outdated and inconsistent.
7. A recently passed city ordinance requires data collection for all encounters and regular analysis and reporting of data.
8. The SFPD has not consistently collected traffic stop data.
9. The requirements of the SFPD's current traffic stop data collection program are unclear.
10. The SFPD has not regularly analyzed its stop data.
11. The SFPD has failed to report the number of Hispanic arrestees to the California Department of Justice.
12. The department's 849(b) release forms do not include demographic information and are kept only in hard copy.
13. Field interview cards include demographic information and are maintained electronically.
14. Body-worn cameras are predicted to reduce the number of citizen complaints and use-of-force incidents.
15. Body-worn camera footage will be used as evidence in legal and administrative proceedings.
16. SFPD and Police Officers' Association (POA) members were disproportionately represented on the body-worn camera policy working group.
17. Members of the body-worn camera policy working group disagreed over the issue of officer review of footage.
18. The Risk Management Office will monitor compliance with the body-worn camera policy.
19. There is anecdotal evidence that some members of the SFPD engage in stop-and-frisk detentions, contrary to official SFPD policy.

**Personnel**

20. The SFPD prioritizes recruitment outreach to young people and aims to provide them with a positive experience of the department.
21. The Chief of Police, as the appointing authority, makes the final decision about who will be invited to attend the Police Academy.
22. The SFPD's Background Investigation Unit conducts extensive investigations, but its operations are fairly opaque and inefficient.
23. While the SFPD has an explicit policy against nepotism and favoritism, and the department has instituted some practices to guard against nepotism, more can be done to curb actual or perceived nepotism in hiring.
24. The absence of rules governing the selection of promotional candidates and the discretion held by the Chief, along with the lack of programs offering support to those seeking promotions, raises the likelihood of bias or favoritism in promotion decisions.
25. Available data indicate that racial and gender diversity at the SFPD has been stagnant over the past three years, during a time when the department greatly increased its hiring.
26. The percentage of officers of color receiving promotions is rising, and an outsized percentage of women are being promoted.

**Use of Force and Officer-Involved-Shootings**

27. The SFPD's use-of-force policies are contrary to best practices and should be revised.
28. The SFPD did not provide sufficient information to evaluate its use-of-force training.
29. The SFPD does not collect data sufficient to evaluate whether people of color are disproportionately the subject of police use of force.
30. The SFPD's implementation of a body-worn camera policy is a positive development, but the final adopted policy reduces accountability benefits.
31. Officer involved shooting investigations conducted by the District Attorney's Office suffer from a lack of independence and an outdated notification system.

**Internal Discipline**

32. The SFPD's internal discipline process is opaque.
33. It is unclear whether the Chief's disciplinary authority is appropriate.
34. The SFPD does not track or evaluate discipline data in a robust manner.
35. The process from the filing of a complaint to resolution is too slow and can be subject to strategic manipulation.
36. Protections for whistleblowers do not appear to be an area of emphasis.
37. Internal Affairs Division positions have traditionally been viewed as a relatively low-status position within SFPD, although there is some evidence that is changing.
38. SFPD leadership sets a highly influential tone regarding discipline and accountability.
39. The POA plays a role in the SFPD's disciplinary process.
40. The SFPD rarely intervenes when Early Intervention System warnings are triggered.

### **External Oversight**

41. San Francisco's police oversight structure is unique and, in some respects, effective.
42. No entity regularly audits SFPD operational effectiveness, high-risk activities, or compliance with policies.
43. In the wake of the texting scandal, no oversight body has undertaken any formal investigation or audit of the SFPD to determine whether there is systemic bias within the department.
44. Time and resource constraints hamper the Police Commission's ability to fulfill its many responsibilities.
45. Complaints made to the Office of Citizen Complaints (OCC) rarely result in disciplinary consequences, and when they do, the discipline imposed is almost always mild.
46. The OCC has failed to meet its own goals for completing timely investigations and suffers from a lack of resources.
47. The Police Commission is currently managing its docket of disciplinary cases and imposing serious discipline, but the lack of available information makes it difficult to evaluate whether the Commission is acting consistently and appropriately in all instances.
48. State law imposes significant restrictions on the transparency of officer discipline.
49. San Francisco is not as transparent about officer discipline as existing confidentiality laws permit, or as its own rules require.
50. Lack of transparency surrounding officer discipline makes it difficult to determine whether disciplinary outcomes are fair and appropriate.
51. Community members report that the lack of information about the outcomes of OCC complaints and officer disciplinary proceedings generates mistrust of the OCC and the SFPD, and a perception that the disciplinary process is ineffective.
52. The current Police Commission has adopted a collaborative and inclusive process for making and revising policy, but the inclusiveness of the policymaking process is limited by collective bargaining rules that give substantial power to the POA relative to other stakeholders.
53. Policy priority-setting at the Police Commission is reactive and the ongoing process of revising existing policies can be slow.
54. Resource and informational constraints limit OCC's ability to contribute to the policymaking process.

### **Brady Policies and Practices**

55. Both the District Attorney's (DA's) Office and SFPD have *Brady* policies and dedicated *Brady* units and committees.
56. The DA's Trial Integrity Unit and SFPD's *Brady* Unit maintain open and positive lines of communication.
57. Both the SFPD and the DA policies lack established deadlines for *Brady* disclosure.
58. SFPD Bureau Order 2010-01 fails to address the treatment and disclosure of *Brady* material outside personnel files.
59. SFPD Bureau Order 2010-01 does not impose mandatory reporting obligations upon officers and employees who discover *Brady* material.
60. There is no reporting chain between the Office of Citizen Complaints and the SFPD's *Brady* Unit or *Brady* Committee.
61. The SFPD *Brady* Committee holds quarterly meetings, which may be insufficient to guarantee timely *Brady* compliance.
62. SFPD officers do not receive regular, quality *Brady* training.

## Culture

63. While witnesses unanimously agreed that individual bias exists, a segment of SFPD officers claim there is no systemic or institutionalized bias within the department.
64. Several SFPD officers and other witnesses believe that systemic and institutionalized bias is widespread in the department.
65. Officers were reluctant to engage with the Panel for fear of retaliation from the POA and/or SFPD.
66. The SFPD blurs the line between it and the POA, and allows the POA to take on an outsized role inside and outside the department, making it more difficult to address the issue of bias within the department.
67. The POA has historically taken positions resistant to reform and insisted that there is no widespread or inherent bias in the department. Because the department has consistently ceded the ground of discourse to the POA, theirs is the dominant law enforcement voice heard on this issue.
68. Several witnesses stated that the SFPD and POA functioned like a "good old boys' club," making it difficult to impose discipline.
69. Witnesses perceive that a code of silence and lack of transparency creates a failure of accountability in addressing bias within the SFPD.

## Crime Data

70. The SFPD's data collection practices and data quality have been criticized in the past, and the extent to which they have improved is unclear.
71. The Compstat process focuses on crime statistics, but not accountability.
72. The SFPD's public reporting of crime data has become less robust, frequent, and detailed over the past five years.

## Recommendations

### General

1. The Police Commission should review department general orders on a regular basis.
2. The SFPD should cease the use of departmental bulletins to modify policies.
3. The SFPD should make all departmental bulletins publicly available online.

### Stops, Searches, and Arrests

4. SFPD should engage in community policing and community outreach.
5. The SFPD should improve initial and follow-up training on implicit bias, procedural justice, and racial profiling.
6. The SFPD should incorporate procedural justice language into its department general orders and department bulletins.
7. The SFPD should issue a department bulletin addressing searches of transgender individuals.
8. The SFPD should update its current data collection policy to clearly define when data collection is required.
9. The SFPD's policies implementing the recent data collection ordinance should clearly define when data collection is required.
10. The SFPD should implement a system to monitor and facilitate officer and supervisor compliance with its data collection policy.

11. The SFPD should make its stop data publicly available on a monthly basis.
12. The city should engage outside researchers or consultants to analyze stop data.
13. The SFPD should internally audit and regularly review its stop data for internal benchmarking.
14. The SFPD should require demographic information on 849(b) forms, analyze the data from 849(b) forms and field interview cards, and issue a certificate of detention to anyone detained and released in accordance with 849(c).
15. The body-worn camera policy should prevent officer review of footage following any reportable use-of-force incident.
16. The SFPD should establish specific criteria for the release of body-worn camera footage to the public.
17. The SFPD should use body-worn camera recordings for internal and external accountability purposes.
18. The SFPD should collect data regarding body-worn camera usage to monitor compliance and should establish a clear policy that body-worn camera violations may be grounds for discipline.
19. After the body-worn camera policy is implemented, it should be actively reviewed every six months and revised if necessary.
20. The body-worn camera training materials should provide more specificity regarding usage.
21. The SFPD should develop and implement a training program for body-worn camera use.
22. The SFPD should eliminate any unlawful stop-and-frisk practices and should collect the data necessary to determine whether such practices are occurring in violation of SFPD policy.

### **Personnel**

23. The SFPD should rededicate itself to recruiting and hiring more officers of color, especially from San Francisco.
24. The SFPD should continue and expand its efforts to build relationships with young people in the community.
25. The SFPD should increase transparency in the selection of background investigators.
26. The SFPD should mandate regular implicit-bias training for background investigators.
27. Background investigators should sign a standardized form stating that there is no prior relationship with the applicant for each assigned case.
28. The SFPD should institute a high-level hiring committee to sign off on the Chief of Police's final hiring decisions, including deviations from the standard hiring and training process.
29. The Police Commission should create and implement transparent hiring and promotions processes and criteria, including a requirement that every candidate's disciplinary history and secondary criteria be considered.

### **Use of Force and Officer-Involved Shootings**

30. The SFPD should regularly update, review, and revise its use-of-force policies.
31. The SFPD's use-of-force policy should clearly and concisely state guiding principles and expectations.
32. The SFPD should limit the circumstances where the carotid restraint is an acceptable use-of-force technique and delineate those circumstances in the written policies.
33. The SFPD should eliminate its "escalating scale" of permissible uses of force in its use-of-force policy and include a focus on "de-escalation."
34. The SFPD should articulate all permissible types of chemical agents, impact weapons, and extended-range impact weapons in its use-of-force policy.

35. SFPD supervisors should be required to evaluate the reasonableness of force after all use-of-force incidents.
36. The SFPD's use-of-force policy should include a provision emphasizing the SFPD's duty to conduct fair and unbiased policing.
37. The SFPD should adopt the "guardian" mentality in its use-of-force training.
38. The SFPD should expand its training on de-escalation and proportionality.
39. The SFPD should expand implicit-bias training, including use-of-force scenario training and community involvement.
40. The SFPD should expand the definition of what constitutes a reportable use of force.
41. For reportable uses of force, the SFPD should expand the types of information that it collects and reports for each instance, including demographic information about each subject.
42. The SFPD should clarify who is responsible for reporting use-of-force information.
43. The SFPD should collect use-of-force reports in an electronic format.
44. The SFPD should evaluate how body-worn camera footage can improve scenario-based training.

### **Internal Discipline**

45. The SFPD should publish and adhere to updated disciplinary guidelines.
46. The SFPD should implement a single, department-wide system to track discipline and regularly report data to the public.
47. The SFPD should document and audit its internal discipline process.
48. Early Intervention System alerts should be reviewed by captains or command staff.
49. SFPD leadership should implement a culture of respect for the Internal Affairs Division.
50. The SFPD should highlight the City's existing whistleblower protections and apply them to people who report all types of SFPD policy violations.
51. The SFPD should implement a strong policy of disciplining any cover-ups of misconduct.
52. The SFPD should employ careful review of prior complaints against the same officer.
53. The SFPD should implement civilian direction/management of the Internal Affairs Division.

### **External Oversight**

54. An Office of Inspector General should be created that should regularly audit the SFPD and OCC for operational effectiveness and compliance with policy.
55. The investigative and policy capabilities of the OCC should be enhanced.
56. The Police Commission should have a dedicated policy analyst and access to a statistician.
57. The Police Commission should develop clear guidelines allowing the use of body-worn camera footage in disciplinary proceedings.
58. Police oversight should be as transparent as the law allows.

### **Brady Policies and Practices**

59. Police officers, employees, the SFPD Internal Affairs Department, and the OCC should be required to provide potential *Brady* material to the SFPD *Brady* Unit within 14 days of discovery.
60. The SFPD should require that its *Brady* Unit review reports of misconduct for *Brady* material within seven days of receipt, and make a preliminary disclosure of potential *Brady* "pending" investigations to the DA Trial Integrity Unit within three days of this determination.

61. The SFPD should require its *Brady* Committee to, absent extraordinary circumstances, complete its review of misconduct and issue recommendations within 45 days of receipt.
62. The DA should update its formal policies to incorporate firm, mandatory *Brady* disclosure deadlines.
63. The SFPD should implement a *Brady* policy addressing *Brady* material located outside peace officer personnel files.
64. The DA and SFPD should track and review *Brady* data and prepare an annual report to the public on *Brady* findings—sustained and unfounded—in order to understand the magnitude of any problem, identify potential problem stations, and better inform training.
65. The SFPD should train and encourage police officers to consult with legal counsel on questions of *Brady* application and compliance.
66. The DA should provide annual interagency *Brady* training tailored to both DA attorneys and SFPD police officers and employees.
67. The SFPD and DA should coordinate and adopt a uniform *Brady* policy and protocol to assure joint, timely, and seamless interagency communication and compliance.
68. The DA should require prosecutors to make a record of written requests to testifying police officers to report any *Brady* information and retain police officer responses.
69. The SFPD should work with the Office of Citizen Complaints to send its sustained findings of misconduct to the SFPD *Brady* Unit and/or *Brady* Committee for review.
70. The San Francisco City Attorney should report civil cases against peace officers to the DA's Trial Integrity Unit.
71. The DA should consider adopting an open file discovery policy.

### Culture

72. The SFPD should demonstrate proactive leadership to eliminate bias in the department.
73. The SFPD should make the "Not On My Watch" pledge mandatory and enforce the pledge.
74. The Police Commission should review current implicit-bias training within the SFPD and recommend additional or different training where appropriate.
75. The Police Commission should engage an outside entity to further investigate the presence of bias within the SFPD.
76. The Police Commission should require the Chief of Police to regularly meet with all affinity groups in an effort to enhance communication and access to information.
77. The SFPD should form a community networking group to meet with the POA and the Police Employee Groups.
78. The Police Commission should engage an outside entity to examine the SFPD's hiring statistics in order to better understand the extent to which nepotism, favoritism, and the "good old boys' club" affect hiring and promotions within the department.

### Crime Data

79. The SFPD should take steps to ensure the accuracy of its crime data and its data practices and quality should be regularly audited.
80. The SFPD should take steps to improve its Compstat process.
81. The SFPD should make crime data regularly available to the public.

# Appendix B:

## A Timeline of San Francisco Police Department Incidents and Calls for Reform

### **1937**

Following an outpouring of civic anger, the Mayor and District Attorney of San Francisco hired a private investigator to examine alleged bribery and corruption in the San Francisco Police Department (SFPD). The entire Police Commission was required to step down, along with dozens of officers who were fired or resigned. During this time, one officer killed himself and his family. The report into the corruption—which included wide-ranging findings of pay-offs, staged raids and bail-bond skimming—went missing from the County Clerk's office in 1939. For more than 70 years, this two-million-word report has remained missing.

### **1943**

The San Francisco Chronicle ran an exposé of an alleged clique of officers who profited from bars, vice, and gambling. The San Francisco Chronicle also ran a 12-part exposé series in 1955 on corruption in the SFPD, which came to be known as the "Blue Gang" stories. It is not clear if any official investigation was ever launched into these allegations.

### **1960**

SFPD officers used fire hoses on a group of students on the steps of City Hall who were protesting the House Subcommittee on Un-American Activities. Officers were accused of beating, clubbing, and dragging the students down the steps, where 64 of the demonstrators were arrested. The incident, which later became known as "Black Friday," is thought to have sparked the Free Speech Movement in Berkeley that happened four years later. The San Francisco Chronicle ran a 50th anniversary article in May 2010 with interviews of the protestors, now senior citizens, who reconvened at City Hall to remember the event.

### **1965**

The newly formed Council on Religion and the Homosexual (CRH) held a fund-raising event in central San Francisco. The SFPD attempted to force the organizers to cancel the event, but, following a meeting with the group's ministers, agreed not to interfere. Guests arrived to find police taking pictures of each of them as they entered and left. The organization's lawyers refused to allow the police to enter the venue and were arrested on charges of obstructing an officer. The arrested lawyers came to trial represented by the American Civil Liberties Union (ACLU). All charges against them were dropped.

### **1966**

Members of the SFPD targeted members of the transgender and transsexual community by arresting and mistreating patrons of Compton's Cafeteria (a late night restaurant in the Tenderloin). A riot started after an officer attempted to arrest a transgender women and she threw her coffee in his face. The incident was one of the first public protests against the SFPD's treatment of the lesbian, gay, bisexual, and transgender (LGBT) community.

## Employment Practices and 1979 Consent Decree

Public Advocates, a non-profit law firm and advocacy organization, brought a civil rights suit against the San Francisco Police Commission and the San Francisco Civil Service Commission on behalf of Officers for Justice (OFJ) in 1973. The action sought to challenge the SFPD's use of quota hiring and specifically focused on the use of entrance examinations. It also petitioned the court for changes to the use of such exams to select candidates for promotion to sergeant, lieutenant, and captain and to monitor the development and use of new tests. The U.S. Department of Justice (DOJ) subsequently sued the City for discriminatory employment practices—this suit was consolidated with the one brought by OFJ.

The suit was successful and in November 1973, the court announced a preliminary decision that prevented the further use of the various tests and introduced quotas on the hiring of and promotion to sergeant. The court findings were revised in May 1975 to take account of the results of newly developed entrance examinations. The original racial quotas were abolished and substituted with a gender-based quota.

The case ultimately resulted in a consent decree, which set goals for hiring and promotion to sergeants, assistant inspectors, lieutenants, and captains with 50% of all vacancies to be filled by Blacks, Hispanics, or Asians/Pacific Islanders. The consent decree was intended to govern selection procedures for 10 years, requiring the City to promote a certain number of officers and prohibiting the City from using methods in its hiring and promotions that would adversely impact women and people of color.

In 1989, most of the required promotions still had not been made because of delays in the test development process. In response to this, the district court ruled that the decree would not terminate by its own terms, but rather only with the court's approval. A "Supplemental Order" was entered by the district court to address the City's failures to meet the prescribed quotas.

A 1991 ruling confirmed that "banding" of test scores was a legal affirmative-action tool to meet promotional goals (banding is the use of a range or "band" of test scores that are statistically insignificant and therefore equivalent for the purpose of determining employment qualifications). This approach provided the City with a method for selecting qualified and diverse candidates from an examination results list. The constitutionality of banding was upheld in the Ninth Circuit Court of Appeals in 1992. A group of experts (representing the City and the other parties) developed a lieutenant's examination and, in April 1993, 255 candidates sat for the test.

Most of the provisions of the consent decree were lifted in 1998, bringing 25 years of litigation and court-ordered monitoring to an end. The City agreed to continue affirmative-action policies and practices and pledged that 45 percent of all new recruits would be people of color. The City also agreed to actively recruit qualified pools of candidates to ensure a representative reflection of the diversity of San Francisco and to look more holistically at educational background and professional training when selecting for promotion. In addition, the City committed to continuing a mentoring program aimed at retaining minority and female officers, and implemented a career development program to help all officers learn the skills needed to achieve promotions.

## 1979

In 1979, community members responded angrily to a verdict of manslaughter (rather than first-degree murder) for the shooting deaths of Supervisor Harvey Milk and Mayor George Moscone. Several hundred San Francisco citizens marched to City Hall. There were allegations that the police reacted to the march aggressively and with unwarranted force, not only at City Hall but also in the Castro area of the city later that night and the following night. The series of the clashes with the police, which became known as the "White Night Riots," resulted in civil lawsuits against the SFPD from citizens who alleged widespread abuses of police powers. In particular, patrons of a bar in the Castro area, Elephant Walk, claimed abusive behavior by officers.

## 1984

Four SFPD officers were fired after paying a prostitute to perform a sex act on an unwilling, and reportedly gay, police cadet at a graduation party. The incident was allegedly leaked by a female officer who had been one of the first new recruits under the quotas mandated by the 1979 consent decree. The whistleblower later went on to claim that she suffered sexual harassment for almost a decade within the SFPD.

## 1988

During a peaceful protest in Union Square, Dolores Huerta, a well-known economic justice advocate, was beaten with a police baton. The beating by a helmeted member of SFPD was caught on video camera and broadcast widely on local news channels. The footage included a clear image of the butt-end of the baton being rammed into Huerta's torso—she suffered several broken ribs and significant internal injuries, necessitating emergency removal of her spleen. Ms. Huerta filed a civil lawsuit against the City and won a substantial settlement. The aftermath of the assault prompted another movement to change SFPD crowd-control policies and a call to address the way in which police misconduct is handled.

## 1989

A local AIDS advocacy group, ACT UP, organized one of their recurring protests to draw attention to the need for government action to address the AIDS epidemic. The protestors attempted to march directly from City Hall to the Castro area of the city. Although the advocacy group followed the same routine as numerous prior protests, police motorcyclists interrupted their route. When the group's police-liaison approached the officers to question why the department was interrupting the protest, he was pushed to the ground and arrested. The march continued without incident until the protestors reached the street intersection where they paused to chant slogans.

They were met by police officers blocking the intersection and forcing them onto Castro Street itself, where they mingled with bystanders. Officers then began arresting protestors and turned their attention to the rest of the crowd. Tactical officers were sent in and ordered members of the public to clear the streets. A line of officers charged down Castro Street, trapping many members of the public between themselves and the initial officers in attendance. Witnesses described being beaten and clubbed with batons and 10 members of the public were seriously injured. Those who managed to enter shops and dwellings on Castro Street were trapped inside for an hour while the seven-block area was declared an unlawful assembly zone.

The police reaction and resulting aftermath led to a class action lawsuit against the City that ultimately cost the City hundreds of thousands of dollars and led to the suspension and resignation of senior members of SFPD. Mayor Art Agnos ordered an investigation into the event and publicly declared it "deeply disturbing." The Office of Citizen Complaints determined that the "Castro Sweep" was ordered by Deputy Chief Jack Jordan. The investigation also found that half of the entire police department had been dispatched to manage a routine protest, which had previously required a minimal presence to maintain order. Deputy Chief Jordan was demoted and later resigned from the department, allegedly in connection to the aftermath of the Dolores Huerta incident in 1983 rather than the Castro Sweep. Captain Richard Cairns was placed on administrative duty and later suspended, Deputy Chief Frank Reed was reprimanded, and Captain Richard Fife was reassigned to the traffic bureau. Following his suspension, Captain Cairns sued the City over how his disciplinary action was handled. He had been personally identified by a man injured on Castro Street as the officer who had assaulted him.

## 1992

SFPD Chief Richard Hongisto was fired after a tenure of only six weeks. Community activists were highly critical of his handling of the demonstrations in San Francisco in the wake of the Rodney King police brutality in Los Angeles. During the demonstrations in San Francisco, an entire neighborhood was subject to widespread arrests. Those individuals arrested were then processed in Alameda County, a tactic which

prevented them from returning to demonstrate in San Francisco. The San Francisco Board of Supervisors ordered Chief Hongisto to release the citizens he had arrested.

Shortly after the demonstrations, the San Francisco Bay Times (a free LGBT community newspaper) published a doctored image of Chief Hongisto, depicting his head on the body of a lesbian activist. Around 2,000 copies of the paper were found at a police station, having been removed from news racks by three officers. Chief Hongisto denied that he had attempted to censor the press but the San Francisco Police Commission found this to be the case and he was dismissed by the Mayor. One of the officers alleged to have been involved in removing the papers, Gary Delagnes, later went on to become president of the Police Officers' Association.

## 1995

A New Year's Eve AIDS benefit party was raided by SFPD officers and 11 party-goers were arrested. Witnesses alleged that officers used excessive force, caused injuries, and made homophobic comments. Several complaints were filed with the Office of Citizen Complaints and many complainants and witnesses appeared before the Police Commission.

Attorneys for those arrested argued that there was no reason for officers to demand a permit for the event, and therefore, there was no justification for the arrests. SFPD Deputy Chief Tom Petrini told the Police Commission that there were concerns about fire safety but an Internal Affairs Division investigation was initiated. Police Commission members were particularly troubled by reports that a camera was seized from one of those arrested and noted that it may be in breach of new policies specifically on this issue (SFPD General Order DGO 5.07 "Rights of Onlookers") (Revised Feb 1995). Four officers were charged with use of excessive force.

Also in 1995, Aaron Williams, a Black man, died while in the custody of SFPD. Witnesses described several officers, led by Officer Marc Andaya, repeatedly kicking Williams in the head. Three canisters of pepper spray were directed into William's face and, despite his difficulty in breathing, he was gagged, restrained, and placed into the back of a police van where he died within a few minutes. At a hearing in relation to William's death, the Police Commission divided on the issue of whether Officer Andaya used excessive force against Williams. Ultimately, Officer Andaya was suspended for 90 days for failing to monitor Williams' medical condition properly following his arrest. Officer Andaya's disciplinary record from his 11-year service as an Oakland Police Officer had included numerous lawsuits and complaints related to brutality and other misconduct. Andaya was ultimately terminated by the Police Commission.

## 2002

Three off-duty SFPD officers, Matthew Tonsing, David Lee, and Alex Fagan, Jr., demanded that two San Francisco residents, Adam Snyder and Jade Santoro, hand over their take-out fajitas. The three officers then assaulted the two men. This incident was labeled "Fajitagate" by the media. Officer Alex Fagan, Jr., was the son of recently appointed SFPD Assistant Chief Alex Fagan, who later became Chief. Grand jury indictments were served on the entire leadership of the department, including Chief Earl Sanders, accusing them of covering up an investigation into the assault by the junior officers. Owing to a lack of evidence, the charges were eventually dropped. Later, in 2006, a civil jury found former officers Fagan and Tonsing liable for damages suffered in the beating and award Snyder and Santoro \$41,000 in compensation.

## 2005

SFPD Officer Andrew Cohen posted clips of parody police videos on his private website. These videos appear to mock minorities, and were sexist and degrading to the LGBT community. Most of the officers involved in the videos were connected to the Bayview Police Station. The leaking of the videos occurred at a time of increased homicides, many of which were taking place in the Bayview-Hunters Point areas. Sensitivities around policing were high and there was community anger at the insulting content of the leaked videos. This incident was dubbed "Videogate."

Mayor Gavin Newsom and Police Chief Heather Fong were highly critical of the officers involved and announced plans for a panel to review the entire department's operations, alongside an Internal Affairs Department investigation. The Mayor also asked the city's Human Rights Commission and the Commission on the Status of Women to conduct their own investigations, although it is not clear whether they did so. Over a dozen officers faced some form of discipline, with Officer Cohen resigning from the department and two other officers receiving 360-day suspensions.

## **2006–2007**

A three-month long series by the San Francisco Chronicle examined and reported on use of force by SFPD. The articles, entitled ‘The Use of Force - When SFPD Officers Resort to Violence,’ reported that 25 percent of use-of-force incidents involved less than five percent of officers. The series criticized oversight procedures as slow and ineffectual, allowing problem officers to continue unchallenged. Police Chief Heather Fong referred to the series as inaccurate, questioning the validity of the data used and emphasized that new oversight structures had recently been put in place to monitor issues such as use of force.

## **2009**

Former SFPD Chief Greg Suhr—then Deputy Chief—was demoted to captain after his failure to follow SFPD policies and state laws on how to deal with domestic violence allegations. An Internal Affairs Division attorney, Kelly O’Haire, prosecuted the case before the San Francisco Police Commission. O’Haire was terminated by the department shortly after Suhr became chief in 2011 and subsequently filed a lawsuit for wrongful termination against the City and Suhr. The City agreed to settle O’Haire’s suit for \$725,000 in 2015.

## **2010**

An audit of an SFPD crime laboratory revealed missing evidence. A recently retired technician, Deborah Madden, was linked to drugs missing in several cases. Chief George Gascón announced that several hundred criminal cases were to be dismissed owing to unreliability of testing practices at the laboratory. Madden was tried twice on felony charges with both juries unable to reach a decision.

## **2011**

A federal investigation revealed that an undercover team of SFPD officers had carried out illegal searches, during which they committed theft and robbery. The officers, Sergeant Ian Furminger, Officer Edmond Robles, and Officer Reynaldo Vargas, were indicted and Furminger and Robles were convicted (Vargas pled guilty and testified against the other two). Furminger applied for bail pending his appeal. In opposition to that motion, the government released scores of text messages demonstrating racial and homophobic bias; the scandal became known as “Textgate.”

# Appendix C:

## Government Motion Containing Textgate Messages

Case 3:14-cr-00102-CRB Document 247-1 Filed 03/13/15 Page 1 of 9

1 MELINDA HAAG (CABN 132612)  
United States Attorney

2 DAVID R. CALLAWAY (CABN 121782)  
Chief, Criminal Division

3 JOHN H. HEMMANN (CABN 165823)  
Assistant United States Attorney

4 5 450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
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John.Hermann@usdoj.gov

6 Attorneys for United States of America

7 8 9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA, ) Case No. CR 14-0102 CRB  
14 Plaintiff, ) DECLARATION OF SPECIAL AGENT TYLER  
15 v. ) NAVE IN SUPPORT OF GOVERNMENT'S  
16 IAN FURMINGER, ) OPPOSITION TO DEFENDANT FURMINGER'S  
17 Defendant. ) MOTION FOR BAIL PENDING APPEAL  
18 }

19  
20 I, Tyler Nave, declare as follows:

- 21 1. I am a Special Agent with the Federal Bureau of Investigations (FBI). I have been a special  
agent since March 2009. I am one of the agents assigned to this case.
- 22 2. During the investigation that led to this case, the FBI obtained text messages for Ian Furminger's  
personal mobile telephone number, including for the time from October 2011 to June 2012.  
23 Furminger was still a San Francisco Police Officer during this time frame. Text messages for  
earlier times were not available when the FBI obtained these messages.
- 24 3. I have reviewed the text messages seized by the FBI. The messages include overtly racists and  
homophobic statements made by Furminger and people with whom he was communicating.

Case 3:14-cr-00102-CRB Document 247-1 Filed 03/13/15 Page 2 of 9

4. I prepared the attached spreadsheet, Attachment A, containing some of those messages.

  - a. The text of the messages highlighted in yellow were messages sent from Furninger's cell phone.
  - b. I redacted the telephone numbers from the spreadsheet.
    - i. The redactions in red, which appear as red blocks, are from Furninger's cell phone.
    - ii. The redactions in blue are from telephone numbers I know from my investigation to be associated with other San Francisco Police Officers.
    - iii. The redactions in black are from telephone numbers associated with civilians known to the FBI or with individuals not known to the FBI.

I swear under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge. Executed this 13<sup>th</sup> day of March 2015 at San Francisco, California.

**TYLER NAVE**  
Special Agent, FBI

Case 3:14-cr-00102-CRB Document 247-1 Filed 03/13/15 Page 3 of 9

MESSAGE DATE/TIME	FROM	TO	MESSAGE TEXT
10/25/2011 16:13:36	[REDACTED]	[REDACTED]	[ Dont worry about my height, worry that Im whitel ]
10/25/2011 16:14:08	[REDACTED]	[REDACTED]	[ White Power! ]
10/26/2011 18:57:21	[REDACTED]	[REDACTED]	[ I was trying to be nice to you as everyone knows your gay ]
10/27/2011 17:20:30	[REDACTED]	[REDACTED]	[ I love calling you a fag! Good enough? ]
10/31/2011 9:38:20	[REDACTED]	[REDACTED]	[ Looks like the minutes ran out on your mexican phone again bitch! ]
11/09/2011 10:07:13	[REDACTED]	[REDACTED]	[ I'm working on us ]
11/09/2011 10:13:24	[REDACTED]	[REDACTED]	[ Fuckin border bandits ]
11/09/2011 10:15:54	[REDACTED]	[REDACTED]	[ We got two blacks at my boys school and they are brother and sister! There cause dad works for school district and I am watching them like hawks ]
11/09/2011 10:17:46	[REDACTED]	[REDACTED]	[ Do you celebrate qauanza at your school? ]
11/09/2011 10:19:18	[REDACTED]	[REDACTED]	[ Yeah we burn the cross on the field! Then we celebrate Whitemas ]
11/09/2011 10:20:33	[REDACTED]	[REDACTED]	[ Its worth every penny to live here away from the savages ]
11/21/2011 17:00:35	[REDACTED]	[REDACTED]	[ Those guys are pretty stupid! Ask some dumb ass questions you would expect from a black rookiel Sorry if they are your buddies! ]
11/24/2011 7:58:49	[REDACTED]	[REDACTED]	[ The buffalo soldier was why the indians Wouldnt shoot the niggers that fought for the confederate They thought they were sacred buffalo and not human ]
11/24/2011 7:58:50	[REDACTED]	[REDACTED]	[ They were not far off Marley was a nigger ]

Case 3:14-cr-00102-CRB Document 247-1 Filed 03/13/15 Page 4 of 9

11/24/2011 8:01:11			[ Hal We stole california from the mexicans too! Would have had Baha too but felt it wasnt worth it ]
11/24/2011 8:03:41			[ n The indians never had shit Columbus thought he landed where he was headed India So HE named them indians They never had a name of their own And the ]
11/24/2011 8:03:42			[ n re is evidence that the moors niggers were here first ]
11/24/2011 8:06:41			[ Gunther Furminger was a famous slave auctioneer ]
12/08/2011 7:21:41			[ I cant imagine working At costco and hanging out with filthy flips. hate to sound racist but that group is disgusting ]
12/10/2011 7:50:55			[ 5 He would be so much better off had he married a white chick with a brain he would have a nice house with white kids that were not ghetto as his are An ]
12/10/2011 8:06:09			[ Just saw on news there was a peace march in oakland. everyone marching was whilte ]
12/10/2011 15:34:36			[ My wife has 2 friends over that dont know each other the cool one says to me get me a drink nigger not knowing the other is married to one just happ ]
12/10/2011 15:34:36			[ ened right now LMFAO ]
12/10/2011 16:15:04			[ Can you work tomorrow? ]
12/10/2011 16:32:54		blue	[ I hardly remember being at your crib straight swervin nitro! bout to do it again foo ]

12/10/2011 16:34:23			[ Cool...hopefully I'll be 97 ]
12/10/2011 16:35:04			[ Da naaaa ]
12/10/2011 16:48:54			[ Gotta get my drunk on....! ]
12/10/2011 16:49:42			[ Word! let me know blood ]
12/10/2011 17:21:16			Have fun tonight! but dont stand under the miselto ]
12/10/2011 17:24:25			[ Hoda and I are getting married! ]
			[ [name redacted] walked up to [name redacted] and said Break yo-self niggai Then [name redacted] said, dont
12/10/2011 18:01:32			make me go old school on yo bitch ass niggai ]
1/23/2012 18:00:29			Ok is fine in the morning im going. In the morning for orden my medical report to hospital
1/23/2012 18:10:51			Ok
1/23/2012 18:11:59			Yeah man something else man! Fuckin sorry ass people
1/23/2012 18:13:19			Ok see you in susie house 3:00pm tank you
			And only when they think there caught red handed...there us a reason why people for not like ....friend....lol
1/23/2012 18:13:59			Oh my fucking god, r u kidding me? i am so sorry
1/23/2012 18:34:00			No not at all, are You kidding me? Its all good, I expected a lot of work and thats not much
1/23/2012 18:40:06			They are called black
1/23/2012 18:41:15			White power
1/25/2012 11:15:08			
1/28/2012 12:39:45			White Power Family, [Furminger home address redacted]

Case 3:14-cr-00102-CRB Document 247-1 Filed 03/13/15 Page 6 of 9

2/5/2012 13:45:39		All good, I still hate black people!
2/10/2012 9:43:26		Niggers should be spayed
2/10/2012 9:44:35		I saw one an hour ago with 4 kids
2/10/2012 9:44:59		See
2/10/2012 9:45:18		That would be four less
2/21/2012 19:19:36		I am just leaving it like it is, painting KKK on the sides and calling it a day!
2/22/2012 13:04:25		Cross burning lowers blood pressure! I did the test myself!
2/22/2012 13:05:39		So do I. Every camping trip I burn an image of the prez
2/24/2012 15:36:29		At his school! Multi purpose room! Their shouldnt be any blacks!
2/28/2012 9:22:05		All niggers must fucking hang
2/28/2012 9:22:09		Oh and Peachey is fuckin retarded
2/28/2012 9:23:22		Ask my 6 year old what he thinks about Obama
4/16/2012 12:05		[ Just boarded train at Mission/16th ]
4/16/2012 12:06		[ Ok, watch out for BM's ]
		[ Too late. I'm surrounded. And the only gun I have is broken! ]
4/16/2012 12:07		[ Your fucked ]
4/16/2012 12:08		[ Dumb nig nugs. ]
4/18/2012 19:20		[ 20,000 bees are in Vacaville near School but they are not dangerous like black people ]
4/20/2012 15:28		[ You are a total homos! And your gay! ]

5/5/2012 17:41:59			[ Busted up but thats what happens to fags! ]
5/6/2012 10:54:36			[ We decided to chill but ended up going to BC house for first half of fight! Home around 9ish ]
5/6/2012 10:55:29			[ Cool...who won that....cotto...not ]
5/6/2012 10:56:23			[ No, the nigger! ]
5/6/2012 10:56:48			[ Nigger... ]
5/10/2012 14:39:25			[ I resent you an email because I haven't heard from you. When do you plan to pay me child support for this month? ]
5/10/2012 14:40:22			[ When do You plan on letting me see [name redacted]? ]
5/10/2012 14:51:26			[ As soon as she wants to but it would be a mistake to force her at this point. ]
5/10/2012 14:51:50			[ Does that mean that you don't plan on paying me? ]
5/10/2012 17:02:17			[ Please answer me. \nDo you plan on paying child support?\n ]
5/10/2012 17:03:55			[ Please answer me! Court wants joint custody, you want full custody! You have a plan to keep me out of [name redacted]life for good ]
5/10/2012 17:05:40			[ Court wants joint custody? What are you talking about? Will you be paying child support? ]
5/10/2012 17:06:46			[ Read last text ]
5/10/2012 17:08:31			[ I'm tired of your nonsense. I need to know if you are planning to pay child support so I can make the necessary decisions. ]
5/10/2012 17:09:32			[ Are You planning on letting me see [name redacted]I am tired of You hurting her future! ]

Case 3:14-cr-00102-CRB Document 247-1 Filed 03/13/15 Page 8 of 9

		[ I'm tired of your nonsense. I need to know if you are planning to pay child support so I can make the necessary decisions. ]
5/10/2012 17:11:57		[ Are You planning on letting me see [name redacted]!! I am tired of You hurting her future! ]
5/10/2012 17:12:27		[ [name redacted] doesn't want to see you. You have hurt her, repeatedly. ]
5/10/2012 17:26:11		[ No, You have hurt her permanently! This was never about her and I, and now she lost her Dad and brother over your inability to budget money! ]
5/10/2012 17:28:02		[ You should see this text war I am having with Lucie! Awesome! Fuck her! ]
5/10/2012 17:28:54		[ Ian you are once again...confused, making things worse and causing stress. Please reply about child support. ]
5/10/2012 17:31:17		[ And You broke my parents hearts too They are 81 and not in great health Her dog is not doing great either Hope your happy cause the gravy train runs ]
5/10/2012 17:33:18		[ to a complete stop in 5 years My parents and Kojack will be gone by then and [name redacted] will be in high school ]
5/10/2012 17:33:19		[ I am far from confused! You have an agenda and is going to seriously damage [name redacted] and her future! ]
5/10/2012 17:36:14		[ Does that mean that you will pay child support? ]
5/10/2012 17:42:38		[ Since this all started you have done nothing to reunite [name redacted] and I only asked for money You all talk about me hurting [name redacted] but never the reason so we ]
5/10/2012 18:11:53		[ can come to a resolution ]
5/10/2012 18:11:54		

			[ You keep creating more reasons. It's been hard to keep up. We 'all' have told you repeatedly. I only ask for [name redacted] child support when you fail to pay me. ]
5/10/2012 18:14:06			
			[ I hate to tell you this but my wife friend is over with their kids and her husband is black! If is an Attorney but should I be worried? ]
5/19/2012 19:45:04			
			[ Get ur pocket gun. Keep it available in case the monkey returns to his roots. Its not against the law to put an animal down ]
5/19/2012 20:27:04			
5/19/2012 20:27:41			[ Well said! ]
5/19/2012 20:29:32			[ U may have to kill the half breed kids too. Don't worry. Their an abomination of nature anyway. ]
6/2/2012 20:38:33			[ Dude. Your boy made Q50 . Sgt. Aj Holder ]
6/2/2012 20:39:00			[ Fuckin nigger ]
6/2/2012 20:39:46			[ LoL and Yolanda Williams ]
6/2/2012 20:40:07			[ Or my ]
6/2/2012 20:40:02			[ Nigger bitch ]
6/10/2012 22:50:24			[ Your sister lies more than any nigger I have ever met in my life! You awake? ]

Key	Ian Furimnger's redacted telephone number
	Police Officer's redacted telephone numbers
	Non-Police Officer's redacted telephone numbers
	Ian Furimnger's sent text messages

# Appendix D:

## List of Selected Panel Interviewees

- **Jeff Adachi**, Public Defender, San Francisco Public Defender's Office
- **John Affeldt**, Managing Attorney, Public Advocates
- **Imam Abu Qadir Al-Amin**, Resident Imam, San Francisco Muslim Community Center
- **Ali Amanath**, San Francisco Police Department (SFPD) Technology Division
- **Eric Baltazar**, Deputy Director, San Francisco Office of Citizen Complaints (OCC)
- **Rick Braziel**, Executive Fellow, Police Foundation; Inspector General, Sacramento County; former Chief of Police, Sacramento, CA
- **London Breed**, President, San Francisco Board of Supervisors
- **Amos Brown**, President, San Francisco NAACP
- **Brian Buchner**, President, National Association for Civilian Oversight of Law Enforcement (NACOLE)
- **Alex Bustamante**, Inspector General, Los Angeles Police Department
- **Teresa Caffesse**, former Chief Attorney, San Francisco Public Defender's Office
- **Angela Chan**, former Commissioner, San Francisco Police Commission
- **Doug Chan**, former Hearing Officer, San Francisco Police Commission
- **Paul Chignell**, Legal Defense Administrator, San Francisco Police Officers' Association (POA)
- **Wade Chow**, Chief of Trial Integrity Unit, San Francisco District Attorney's Office
- **Clifford Cook**, SFPD Officer
- **John Crudo**, SFPD Internal Affairs Division
- **Sheryl Davis**, Executive Director, Collective Impact
- **Petra DeJesus**, Commissioner, San Francisco Police Commission
- **Ines Vargas Fraenkel**, Attorney, OCC
- **Dr. Lorie Fridell**, Associate Professor of Criminology, University of South Florida; Author, Fair and Impartial Policing: Recommendations for the City and Police Department of San Francisco (2007)
- **George Gascón**, District Attorney, City of San Francisco; former Chief of Police, SFPD
- **Leela Gill**, Community Representative, Body-Worn Camera Policy Working Group
- **Jeff Godown**, Chief of Police, Oakland Unified School District; former Interim Chief of Police, SFPD
- **Phillip Goff**, Associate Professor, UCLA Center for Policing Equity
- **Judy Greene**, Director, Justice Strategies
- **Michael Haddad**, Attorney, Haddad & Sherwin, LLP
- **Martin Halloran**, President, POA
- **Jack Hart**, San Francisco Police Academy
- **Joyce Hicks**, Director, OCC

- **Benjamin Houston**, Human Resources Manager, SFPD
- **Victor Hwang**, Commissioner, San Francisco Police Commission
- **Marion Jackson**, Officers for Justice; retired SFPD officer
- **Jennifer Johnson**, Deputy Public Defender, San Francisco Public Defender's Office
- **Peter Keane**, former Commissioner, San Francisco Police Commission
- **Carol Kingsley**, former Commissioner, San Francisco Police Commission
- **Tonia Lediju**, Director, Controller's Office, City Services Auditor Division, Audits Unit
- **Leroy Lindo**, retired SFPD Officer
- **Heather Littleton**, Project Manager, Controller's Office, City Services Auditor Division, City Performance Unit
- **Suzy Loftus**, President, San Francisco Police Commission
- **Essex Lordes**, Co-Director, Community United Against Violence
- **Hon. Harry Low**, Committee Member, SFPD Brady Committee; retired judge
- **Allison MacBeth**, Attorney, San Francisco District Attorney's Office, Trial Integrity Unit
- **Daniel Mahoney**, SFPD Personnel Division (retired)
- **Samara Marion**, Attorney, OCC
- **Dr. Joe Marshall**, Commissioner, San Francisco Police Commission
- **Thomas Mazzucco**, Commissioner, San Francisco Police Commission
- **Tracy McCray**, SFPD Officer
- **Tracey Meares**, Walton Hale Hamilton Professor of Law, Yale Law School
- **Sonia E. Melara**, Commissioner, San Francisco Police Commission
- **Susan Merritt**, Technology Division Director, SFPD
- **Corina Monzon**, Project Manager, Controller's Office, City Services Auditor Division, City Performance Unit
- **Kelly O'Haire**, former Internal Affairs Division Attorney, SFPD
- **Sean Perdomo**, SFPD Officer
- **Dr. Steven Raphael**, Professor, UC Berkeley
- **Joe Reilly**, former Secretary, San Francisco Police Commission; SFPD Officer (retired)
- **Louise Renne**, former San Francisco City Attorney; former Commissioner, San Francisco Police Commission
- **Shawn Richard**, Brothers Against Guns
- **Donna Salazar**, Attorney, OCC
- **Ron Sanchez**, former Commander, Los Angeles Police Department
- **Nina Sariaslani**, Attorney, SFPD Internal Affairs Division
- **Julia Sherwin**, Attorney, Haddad & Sherwin, LLP
- **Rev. Richard Smith**, Vicar, St. John the Evangelist Episcopal Church
- **Peg Stevenson**, Director, Controller's Office, City Services Auditor Division, City Performance Unit
- **Greg Suhr**, former Chief of Police, SFPD

- **Felix Tan**, Public Information Officer, City of Richmond Police Department
- **Art Tapia**, Member, Officers for Justice; SFPD Officer (retired)
- **Rev. Arnold Townsend**, Vice President, San Francisco NAACP; Associate Minister, Without Walls Church
- **Mawuli Tugbenyoh**, Aide to City of San Francisco Supervisor Malia Cohen
- **L. Julius Turman**, Vice President, San Francisco Police Commission
- **Alice Villagomez**, Human Resources Director (retired), SFPD
- **Dr. Samuel Walker**, Professor Emeritus, University of Nebraska School of Criminology and Criminal Justice
- **Peter Walsh**, SFPD Risk Management Division
- **Victor Wang**, Crime Analyst, City of Richmond Police Department
- **Walter Ware**, SFPD Officer
- **Dr. David Weisburd**, Distinguished Professor, George Mason University
- **Sean Whent**, former Chief of Police, Oakland Police Department
- **Yulanda Williams**, President, Officers for Justice; SFPD Sergeant
- **Ashley Worsham**, Attorney, SFPD Internal Affairs Division
- **Robert Yick**, SFPD Internal Affairs Division
- **Rebecca Young**, Assistant Public Defender, San Francisco Public Defender's Office; Member, Body-Worn Camera Policy Working Group

# Appendix E:

## Selected Correspondence Related to SFPD Cooperation with the Panel



**EDWIN M. LEE**  
MAYOR

POLICE DEPARTMENT  
**CITY AND COUNTY OF SAN FRANCISCO**  
 HEADQUARTERS  
 1245 3<sup>RD</sup> STREET  
 SAN FRANCISCO, CALIFORNIA 94158



**GREGORY P. SUHR**  
CHIEF OF POLICE

October 5, 2015

Mr. Anand Subramanian  
 Executive Director  
 Blue Ribbon Panel on Transparency, Accountability, and  
 Fairness in Law Enforcement  
 Sent via Email: [anand@policylink.org](mailto:anand@policylink.org)

Dear Mr. Subramanian:

I am in receipt of your e-mail dated October 1, 2015, regarding the Blue Ribbon Panel on Transparency, Fairness, and Accountability in Law Enforcement.

As part of our commitment to the recommendations of the President's Task Force on 21st Century Policing, especially in regard to Pillar One; Building Trust and Transparency, the Police Department supports the efforts of the panel. We are happy to provide documentation and interviews at the request of the panel as practicable.

All requests for information and/or scheduling of interviews should be made to Deputy Chief Hector Sainz, Chief of Staff, [hector.sainz@sfgov.org](mailto:hector.sainz@sfgov.org) or through his assistant at (415) 837-7002.

Sincerely,

**GREGORY P. SUHR**  
 Chief of Police

/cf

EDWIN M. LEE  
Mayor

POLICE DEPARTMENT  
**CITY AND COUNTY OF SAN FRANCISCO**  
 HEADQUARTERS  
 1245 3RD STREET  
 SAN FRANCISCO, CALIFORNIA 94158

November 6, 2015

GREGORY P. SUHR  
CHIEF OF POLICE

The Honorable George Gascón  
 District Attorney's Office  
 850 Bryant Street, 4th Floor  
 San Francisco, CA 94103

Dear DA Gascón:

I am writing regarding your taskforce and "Blue Ribbon Panel On Transparency, Fairness, and Accountability in Law Enforcement" ("Panel"). Public statements that you and your office have made suggest that the taskforce is investigating the alleged misconduct of members within the San Francisco Police Department ("SFPD") relating to the well-documented "text messaging cases," and the Panel is investigating the same alleged text messaging cases, the DNA crime lab incident, and the Sheriff Department's alleged mistreatment of inmates. For me and my department to be helpful in these efforts, I need you to take certain steps to make the transfer of information both feasible and lawful.

As you know, when I received notification that members of my department were involved in racist text messaging, I was disgusted and immediately took corrective measures – actions which are well-documented in the media, at Police Commission meetings, and in correspondence between our offices. My staff investigated these allegations. As you also may be aware, a number of these officers sought relief from the Superior Court to prevent that investigation from proceeding. Those cases are pending before the Superior Court. (*Daugherty et al. v. City and County of San Francisco et al.*, Case No. CPI-15-514302).

I know there is much work to be done to address racial and ethnic disparities and implicit bias issues not only within my department but within the entire criminal justice system. Earlier this year, the Burns Institute released a study analyzing the racial and ethnic disparity that exists within the criminal justice system here in San Francisco; from arrests to bookings, from pre-trial diversion programs to prosecution, and from conviction/sentencing to probation. No single department was immune from the findings – local law enforcement agencies, the District Attorney's Office, the Probation Department, or the Courts. Although not a new phenomenon, it was disheartening to see that after years of community involvement and youth engagement efforts with the objective of reversing this trend, there is still so much we in the criminal justice system need to do to address these disparities. I am committed to working with the Burns Institute and others to find solutions to racial and ethnic disparities and implicit bias issues that exist within my department.

Consistent with my long-standing commitment to address these issues, I have committed to working with your office to allow you, your taskforce, and your Panel to do their work to the extent feasible, practical, and lawful. That said, the information regarding the goals and status of your taskforce and/or Panel has not been made clear to me. Thus, I have only been able to discern what is available in the media. For instance, the only communication I had with you relating to your office's investigation into the text messaging incidents occurred earlier this year following your press release announcing the formation of a taskforce. On March 31, 2015, I received a letter from you requesting documents (reports, supplemental reports, and statistical data) authored by and/or related to the 14 officers involved in the "text messaging" case. As you recall, on April 7, 2015, I sent a reply to your request providing you with a point person in the Police Department's Risk Management Office who could assist your office.

Letter to DA George Gascón

Page 2

November 6, 2015

Although I did not receive a response, on May 7, 2015, you held another press conference and announced that you would “expand[...] the existing taskforce that was implemented to investigate misconduct related to racist and homophobic text messages sent by 14 SFPD officers, revelations of faulty testing at the DNA Crime Lab, and prize-fighting of inmates in our County Jail.” And you stated during this press conference that this expansion would be limited to the text messaging incident. You further announced that three notable and highly-respected judges were asked to assist with the review of 3,000 arrests in which the 14 officers were involved to ensure that bias did not play a role or result in the wrongful prosecution or conviction of any individual. You also stated during the media event that your taskforce would go further than the text messages to determine if this case was indicative of deeper biases throughout the Police Department. I welcomed the inclusion of these three judges as part of your taskforce.

I am now receiving further requests for information from third-party inquirers, and I am writing to you because the requests raise issues that I need your cooperation to address.

The first issue concerns the authority of the Panel to seek information and interviews. On October 1, 2015, I received an email from Anand Subramanian, who introduced himself as the Executive Director of the Panel and claims to represent the Panel. He informed me that the three renowned judges you mentioned in your May 7 press release that formed your taskforce was “a separate entity” called the “Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement.” On October 23, 2015, I received a follow-up email requesting interviews and documents.

This self-introduction from Mr. Subramanian coupled with the request for interviews and information sought raised a number of issues including Constitutional and statutory concerns. As Chief of Police, I am obligated to comply with the U.S. Constitution, the California Constitution, Government Code Section 3500 et al., and Penal Code Section 832.7. Thus, members may have a right to representation. All the information I have relating to your taskforce I have received thus far has been gleaned from your press releases and media reports. I do not understand the scope of the Panel’s authority or scope of inquiry. For those reasons, clarifying the Panel’s authority and power would aid in the Department’s production of the information and interviews. For example, to what extent, if any, does the Panel and/or independent entities have authority to request interviews? Is this Panel and/or the independent entities an extension of the District Attorney’s Office? Please provide the legal authority the Panel has to obtain this information and request interviews.

Second, in order to facilitate the voluminous document request we recently received and the anticipated requests we expect in the near future from the various subgroups within the Panel and taskforce you created, we ask that you designate one single point of contact within your office to work with the SFPD. Some of the information sought may be protected from public disclosure; however, it is already available to you as a law enforcement agency. I will continue to cooperate with your office and provide the information to you. It is within your discretion to determine whether it is appropriate to share information with the taskforce or the Panel that may be protected by the U.S. Constitution, California Constitution, state, or local law. Attached to this letter we are providing you with information and documents responsive to your Panel’s request (Attachment 1). To the extent permissible by law and practicable, we will continue to provide additional information upon receiving the single point of contact from your office and clarifying the scope of the information sought. To assist you as you move forward, all inquiries for information, documents, or interviews should be routed through the SFPD’s single point of contact, Deputy Chief Hector Sainez.

Third, the Panel is requesting information relating to *Daugherty et al. v. City and County of San Francisco et al.*, Case No. CPF-15-514302. There are three orders bearing on the issue of confidentiality and govern the protection of documents (Attachment 2: Protective Order dated June 22, 2015, Proposed Order Served on the City September 20, 2015, Proposed Protective Order Served on the City September 21, 2015). I am unable to provide information to the public related to the case at this time.

Letter to DA George Gascón

Page 3

November 6, 2015

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Fourth, I will need your office to work to clarify the information that is being sought, as some of the document requests I received are extensive and at times vague. For instance, the request is for all IAD complaint files. There is no time period attached, and there are a number of Constitutional and statutory concerns. Furthermore, some of the information sought is currently available to your office as you are a law enforcement agency, and we have an Operations and Data Sharing Agreement that dictates the access and parameters around sharing that information through the JUSTIS HUB Project (Attachment 3). Although I am fully committed to cooperating, it is simply unfeasible and unreasonable to respond to multiple entities (third-party inquirers and/or multiple law firms acting on behalf of the Panel) and to provide the same information/documentation to these entities, much of which is available through or has already been provided to the District Attorney's Office. I will need your office's commitment to work to gather information that it can provide to the multiple sources, rather than have my department respond to multiple requests or to requests for information that your office can gather itself.

Finally, without further information, I cannot compel department members to be interviewed. As you know, there is a very well-crafted and proven procedure in place to request witnesses in any legal or administrative proceeding. There are already systems in place, such as the Office of Citizen Complaints and the San Francisco Police Commission, that deal with investigating allegations of police officer misconduct. They also provide oversight to the Department and make various policy recommendations. In this instance, I lack the authority to compel or even request members of my staff to participate in the interviews the Panel has requested, especially without further information as to their creation, authority, and power. There also are concerns that various law firms may be reaching out individually to members of my department requesting an interview or appearance at a public meeting. Due to these concerns, I ask that no outside entity contact individual members of my staff for interviews. I will forward the current list of names and any subsequent requests for interviews to the San Francisco Police Officers Association for sworn members and other applicable associations for non-sworn members. Requests for appearance before the Panel, unless by subpoena, should be made through those representative bodies.

Again I must stress that it is my intent to fully cooperate with any review of my Department, including alleged misconduct of members. However, there must be a clear and concise procedure in place in order for us to productively participate in the process. I will be notifying those independent entities requesting information that all inquiries should be directed through your office.

If I can be of further assistance, please feel free to contact me.

Sincerely,

**GREGORY P. SUHR**  
Chief of Police

GS/ac/cf

Attachments

- c: Suzy Loftus, President, San Francisco Police Commission
- Micki Callahan, Director, San Francisco Department of Human Resources
- Joyce Hicks, Director, San Francisco Office of Citizen Complaints
- Martin Halloran, President, San Francisco Police Officers Association
- Raquel Silva, Executive Director, Municipal Executives Association

## CITY AND COUNTY OF SAN FRANCISCO

## OFFICE OF THE DISTRICT ATTORNEY



George Gascón  
District Attorney

November 12, 2015

Chief Gregory Suhr  
San Francisco Police Department  
1245 3<sup>rd</sup> Street  
San Francisco, CA 94158

Dear Chief Suhr,

Thank you for your letter of November 6, 2015. I greatly appreciate your expressed commitment to work with us and to cooperate in our work on the critically important issue of potential bias in law enforcement in the City of San Francisco.

In response to your questions, I wanted to explain the genesis of the Blue Ribbon Panel on Transparency, Fairness, and Accountability in Law Enforcement ("Panel") I have initiated.

The text messaging cases to which your letter refers raised grave concerns for me and my office as well as for the City. I believe it was incumbent upon me to launch a fair, expeditious and thorough inquiry to better understand the issues of potential bias those cases raised. These issues go directly to our shared oath to uphold the Constitution of the United States and the State of California.

My office was able to identify almost 5,000 cases based in whole or in part on the actions or testimony of the officers involved in the text messaging cases, all of which required review. Because our Trial Integrity Unit has only one full-time employee, and additional resources were not made available by the City to deal with this issue, I made the decision to initiate the Blue Ribbon Panel.

The Panel is composed of three prominent retired state and federal judges in California who together have over 50 years of experience on the bench. I asked these three judges, all of whom are widely respected for their temperament, judgment and integrity, to volunteer their time to conduct a thorough review of the cases at issue. I have also asked them to ensure that their review is impartial and independent of my office as well as of other stakeholders. I intentionally chose judges from outside San Francisco precisely to avoid any claim of influence by personal relationships or political involvement. The judges are not being paid by my office or anybody else. They have committed to performing the work on a *pro bono* basis.

In addition to reviewing the individual cases, the Panel has asked to investigate and I have agreed that they should investigate, the issue of potential racial bias in law enforcement in the City more generally — an issue both you and I have pledged to comprehensively address. In that effort, the Panel is being supported by several prominent law firms in San Francisco – including Morrison & Foerster, Sidley Austin, Sheppard Mullin, Baker & McKenzie, Morgan, Lewis & Bockius, Hanson Bridgett, and Munger, Tolles & Olson. Each firm is reviewing a separate area: 1) stops, searches and arrests, 2) personnel practices 3) culture, 4) internal discipline, 5) shootings and use of force, 6) crime clearance

## CITY AND COUNTY OF SAN FRANCISCO

## OFFICE OF THE DISTRICT ATTORNEY

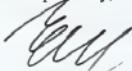
and data, and 7) external oversight. Each firm is volunteering its services on a *pro bono* basis. The law firms are tasked with conducting a thorough review of their designated areas, including reviewing policies and procedures, data and written reports, and interviewing relevant parties and impacted community members. After completing the review, and based on their work, the Panel expects to issue a comprehensive report and recommendations.

The Panel has also requested the opportunity to hear directly from witnesses and from members of the public. To that end, the Panel is organizing a number of public hearings where witnesses will be invited to address the Panel in a public forum. These hearings will provide an opportunity for transparency to the community.

The City Attorney's Office has been integrally involved in the initiation of the Panel. Under state law, the panel is acting as an advisory committee pursuant to Administrative Code Chapter 67.4. I have requested that they act independently to ensure their investigation will be impartial and apolitical. In accordance with that goal, the Panel has engaged its own General Counsel, Jerry Roth of Munger, Tolles & Olson, who is working with and advising the Panel and its Executive Director, Anand Subramanian. Mr. Roth is a former federal prosecutor and white collar criminal attorney and has over three decades of experience conducting investigations. Mr. Subramanian works for PolicyLink, an independent non-profit that focuses on issues of racial and economic equity.

We welcome your pledge of cooperation. I appreciate your response to the document requests that you sent on November 6, 2015. As the Panel is independent of this office, I ask you to respond directly to the Panel (and in particular, Mr. Subramanian) regarding its requests in the future. I have also passed your letter along to Mr. Subramanian and the Panel so that they can address some of the logistical issues that your letter raised.

Respectfully,



George Gascon  
District Attorney

Cc: Suzy Loftus, President, San Francisco Police Commission  
Joyce Hicks, Director, Office of Citizen Complaints  
Martin Halloran, President, San Francisco Police Officers' Association  
Micki Callahan, Director, San Francisco Department of Human Resources  
Raquel Silva, Executive Director, Municipal Executives Association  
Anand Subramanian, Executive Director, Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement  
Jerome Roth, General Counsel, Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement

**Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement**

November 12, 2015

Chief Gregory Suhr  
San Francisco Police Department  
1245 3<sup>rd</sup> Street  
San Francisco, CA 94158

Dear Chief Suhr,

District Attorney George Gascón shared with us your letter of November 6, 2015. Thank you for reaching out to him. We are writing to respond to several of the issues you raised so we can work together cooperatively to address any issues of racial bias in the Police Department that we understand are a major concern of yours.

We are the three members and the Executive Director of the Blue Ribbon Panel on Transparency, Fairness, and Accountability in Law Enforcement ("Panel") initiated by the District Attorney. The three of us who are the members of the Panel are all former state or federal judges in California. Although the DA initiated the Panel pursuant to his authority to enlist the assistance of advisory bodies, he has asked that the Panel operate, investigate and draw conclusions independently. As former judges, we take that commitment to independence and neutrality very seriously.

The Panel has also secured the *pro bono* services of several prominent San Francisco law firms to advise it and assist in its work. These firms are working closely with the Panel's Executive Director. Each of them has been asked to investigate issues related to one of several designated topics: 1) stops, searches and arrests, 2) personnel and internal discipline, 3) culture, 4) *Brady* procedure, 5) use of force and officer-involved shootings, 6) crime clearance, and 7) external oversight.

The purpose of the Panel is to investigate potential bias in the thousands of cases that involved police officers identified in the "text messaging cases" and to investigate more broadly issues of racial bias in law enforcement in the City of San Francisco. To correct an assumption made in your letter, the Panel will not be investigating any specific instances of "alleged misconduct" by San Francisco Police Department officers, nor will the Panel be investigating specific officers. The Panel will not be investigating the specific text messaging cases, the DNA crime lab incident, nor the Sheriff Department's alleged mistreatment of inmates. We hope this clarification alleviates most of the concerns raised in your letter.

To perform its important investigative work, the Panel has requested information, documents, and interviews of members and staff of the Department and other stakeholders. We understand that much of this information is not in the hands of the District Attorney's Office or came to that Office from the Department. We appreciate your cooperation in submitting a limited number of the requested documents to the DA's office. As I am sure you understand, the greater access the Panel and its advisors have to this important information, the more thorough, accurate, and useful its report and recommendations will be.

**Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement**

We understand there are potential limitations to your cooperation imposed by state law. For example, we understand the Police Officer's Bill of Rights and Penal Code § 832.7 may prevent you from releasing certain information. However, much of the information would be the proper subject of a public records request and other information could be provided in redacted form to avoid running afoul of any legal prohibitions on disclosure. Nor do we understand there to be restrictions on interviews of members or staff of the Police Department.

We also want to minimize the logistical inconvenience our requests may impose. To that end, the Panel has designated its Executive Director, Mr. Anand Subramanian, to act as your centralized point of contact. He is committed to working with you and others in the Department regarding interview, document and information requests, and will direct the law firm working groups to channel any requests of the Department through him. Mr. Subramanian will be contacting Deputy Chief Inspector Sainez, your designated point of contact for the Department, with a clarified list of documents and interview requests within the next week. Please feel free to contact him anytime with further questions.

We appreciate your pledge of cooperation in examining these important issues, including your stated commitment to following the recommendations of the President's Task Force on 21st Century Policing, and look forward to working with you.

Sincerely,

Anand Subramanian  
Executive Director of the Blue Ribbon Panel on Transparency, Fairness, and Accountability in Law Enforcement

Justice Cruz Reynoso  
Member of the Blue Ribbon Panel on Transparency, Fairness, and Accountability in Law Enforcement

Judge LaDoris Cordell  
Member of the Blue Ribbon Panel on Transparency, Fairness, and Accountability in Law Enforcement

Judge Dickran Tevrizian  
Member of the Blue Ribbon Panel on Transparency, Fairness, and Accountability in Law Enforcement

# MESSING ADAM & JASMINE

SACRAMENTO  
SAN FRANCISCO

Gregg McLean Adam  
greg@majlabor.com  
direct 415.266.1801

Jonathan Yank  
jonathan@majlabor.com  
direct 415.266.1802

November 16, 2015

## VIA E-MAIL AND REGULAR MAIL

George Gascón  
San Francisco District Attorney  
850 Bryant Street, 3rd Floor  
San Francisco, CA 94103

**Re:** Blue Ribbon Panel on Transparency, Fairness, and Accountability  
in Law Enforcement

Dear Mr. Gascón:

We write on behalf of our client, the San Francisco Police Officers Association ("POA"), to address numerous concerns brought about by the activities of your Blue Ribbon Panel on Transparency, Fairness, and Accountability in Law Enforcement ("Blue Ribbon Panel"), particularly in regard to its apparent investigation regarding so-called "text messaging cases" involving several San Francisco Police Officers. We understand that your Blue Ribbon Panel, including its legal representatives, have made requests to obtain personnel records and to arrange to take testimony of a number of Police Officers represented by the POA. And we are in receipt of a November 6, 2015 letter from Police Chief Gregory P. Suhr, in which he raised several of our concerns.

Quite correctly, Chief Suhr inquired as to the Panel's authority to obtain confidential personnel records and to require individuals to appear and testify. California Government Code section 27721 addresses when an agency has such authority, providing that such subpoena power "be authorized by ordinance or resolution to conduct the hearing; to issue subpoenas; to receive evidence; to administer oaths; to rule on questions of law and the admissibility of evidence; and to prepare a record of the proceedings." Thus, for example, Section 96.6 of the San Francisco Administrative Code provides such legislative authority to the Office of Citizen Complaints. However, as far as we are aware, no such express legislative authority has been granted to the Blue Ribbon Panel. Nor are we aware of any authority which would allow the Panel to subpoena documents expressly subject to protective orders issued by the *San Francisco Superior Court in Daugherty et al. v. City and County of San Francisco et al.*, Case No. CPF-15-5 14302.

One issue not addressed in Chief Suhr's letter is Police Officers' protections arising under the Public Safety Officers Procedural Bill of Rights Act ("POBRA"), Government Code section 3300 *et seq.* We will not belabor the issue by listing the myriad substantive and

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94104

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MAJLABOR.COM

November 16, 2015

George Gascón

Re: Blue Ribbon Panel on Transparency, Fairness, and Accountability in Law Enforcement

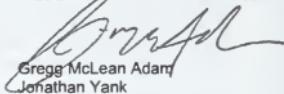
Page 2

procedural protections arising under the POBRA. Suffice it to say that the POBRA, in conjunction with related provisions of the Penal Code, places strict limitations on the discovery of personnel records and on interrogations of protected Police Officers. This is true even when the investigating entity is not the direct employer of the Officers. (See, e.g., *California Correctional Peace Officers Association v. State of California* (2000) 82 Cal.App.4th 294 [POBRA rights apply to correctional officers in Department of Justice investigation].) And we would be remiss if we failed to remind you that public employees, such as the Police Officers represented by the POA, retain privacy and other protections arising under both state and federal constitutions. (See, e.g., *Bagley v. Washington Township Hospital District* (1966) 65 Cal.2d 499.)

In light of the foregoing and the additional concerns raised by Chief Suhr, we make two requests for the purpose of vindicating Police Officers' rights and, thus, protecting the integrity of your Blue Ribbon Panel's investigation. First, we request that you immediately provide us with whatever authority (if any) you believe grants the Panel the power to subpoena Officer's testimony and confidential personnel records. Second, we ask that all attempts to arrange interviews of Police Officers represented by the POA be made through the POA, so as to ensure that Officers' rights are protected and that the Panel's investigation not be tainted as a result of any potential violation of those fundamental protections.

Very truly yours,

MESSING ADAM & JASMINE LLP



Gregg McLean Adam  
Jonathan Yank

GMA/JY:jag

cc: Martin Halloran, President SFPOA  
Justice Cruz Reynoso c/o George Gascón  
Judge LaDoris Hazzard Cordell c/o George Gascón  
Judge Dickran Tevrizian c/o George Gascón  
Gregory P. Suhr, Chief of Police  
Martin Gran, Director of Employee Relations  
SFPOA Executive Board



**EDWIN M. LEE**  
MAYOR

POLICE DEPARTMENT  
**CITY AND COUNTY OF SAN FRANCISCO**  
 HEADQUARTERS  
 1245 3<sup>RD</sup> STREET  
 SAN FRANCISCO, CALIFORNIA 94158



**GREGORY P. SUHR**  
CHIEF OF POLICE

November 30, 2015

Mr. Anand Subramanian  
 Executive Director  
 Blue Ribbon Panel on Transparency, Fairness, and Accountability In Law Enforcement  
 Sent via Email: anand@policylink.org

Dear Mr. Subramanian:

We are in receipt of your letter dated November 12, 2015, regarding the Blue Ribbon Panel ("Panel") on Transparency, Fairness, and Accountability in Law Enforcement. On the same day, we received a letter from the District Attorney ("DA") informing us that the Panel, which includes three well-respected judges, was initiated due to a lack of staffing and/or funding within his office to "deal with this issue." The DA went on to say that the Panel will be doing its work independent of his office. Although both letters clarify the intent of the Panel, there are still unanswered questions which lead to an overall concern regarding the Panel, including its autonomy from the District Attorney's Office and its authority as an investigative body.

In any event, we welcome this review, including the expanded scope relating to the potential racial disparities which may exist within the criminal justice system in San Francisco; the Police Department, Sheriff's Office, District Attorney's Office, Adult Probation, and the Courts.

The District Attorney cites Administrative Code 67.4 as the legal authority for creating the Panel. As a department head, the District Attorney has the authority to create a passive meeting body to make policy recommendations. The DA has asked the Panel to work independently due to limited resources, but nonetheless, the Panel is not an independent policy body that has its own power to subpoena records or have direct access to confidential or restricted information. As such, a substantial amount of documents and information responsive to your request dated October 23 on behalf of the Panel were forwarded to the DA's Office for their review and dissemination as they deemed appropriate. The packet included a reference list (see attached) indicating whether an item was provided, not subject to release, already available to the DA's Office per the MOU between our agencies, too vague/vast of a request, or information under the control of another entity and the contact information of that entity.

Due to the legal restrictions on releasing much of this information, coupled with the fact that my department also lacks the same capacity cited by the District Attorney as reason for not being able to go forward with the work of his "taskforce," assigning staff performing other duties to sort through documents already available to the DA through several means would be an unfair burden on my staff as well as result in a substantial cost to the general public. Having said that, inquiries from the Panel will be processed as Public Records Act requests which will require a multi-step process each time. First, responsive records must be identified. Once responsive records are gathered, staff must analyze whether the information is subject to disclosure. This will require us to make a determination on a case-by-case basis for each document.

In regard to interviews, Mr. Jerome C. Roth has advised participation by members will be voluntary. That being the case, all requests on behalf of the Panel should go through the appropriate labor group representing an active employee, i.e., San Francisco Police Officers Association, Municipal Executive Association, Municipal Attorney's Association. As for former and retired employees, they are no longer members of this department and should be contacted directly or through the San Francisco Retirement Board.

Letter to Mr. Subramanian

Page 2

November 30, 2015

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I want to reiterate that we take the issues of racial bias, procedural justice, and transparency in law enforcement very seriously. We currently are working with the Bar Association of San Francisco on addressing racial disparities that may exist within the criminal justice system (Police Department, Sheriff's Department, District Attorney's Office, Adult Probation Department, and the Courts) here in San Francisco. In addition, with the report released by President Barack Obama's Task Force on 21st Century Policing, we reviewed each of the 58 recommendations and 91 action items of the six pillars. We carefully reviewed our policies and procedures to determine what we currently have in place, what we need to implement, and more importantly, what we need to change to achieve the desired outcomes outlined in the President's report. Our response is available online, [sf-police.org/Modules>ShowDocument.aspx?documentid=27534](http://sf-police.org/Modules>ShowDocument.aspx?documentid=27534).

We also are currently participating in several cooperative efforts to address potential racial disparities. As already referenced, we are working in collaboration with the Bar Association of San Francisco as well as with the W. Haywood Burns Institute for Juvenile Justice Fairness and Equity, and our local community through the Chief's African American Advisory Forum to look at ways to better build/re-build trust in the communities we serve, especially some communities of color where that trust is not what it should be. We also will review PolicyLink's recently published report on promoting justice in policing and will consider its recommendations comparing them to our existing efforts and the report issued by the President's Task Force on Policing in the 21st Century.

You can see we clearly have been seeking independent review of our operations and procedures. Our process involves working closely with the San Francisco Police Commission and the Office of Citizen Complaints, two bodies established by the City Charter to provide civilian oversight to the Police Department, and more importantly, to establish best practices that might move us forward and make us a better department.

We will continue to make ourselves available to the Panel and its representatives during this review, as time and resources permit. Going forward, I ask you to communicate directly with Lieutenant Christopher Woon at Police Legal, [chris.woon@sfgov.org](mailto:chris.woon@sfgov.org), who will be acting as your requested point of contact for this process.

If I can be of further assistance, please feel free to contact me.

Sincerely,

  
GREGORY P. SUHR  
Chief of Police

GS/ac/cf

Attachments

c: Suzy Loftus, President, San Francisco Police Commission  
George Gascón, District Attorney, San Francisco District Attorney's Office  
Micki Callahan, Director, San Francisco Department of Human Resources  
Joyce Hicks, Director, San Francisco Office of Citizen Complaints  
Sean Connolly, President, Municipal Attorneys Association  
Martin Halloran, President, San Francisco Police Officers Association  
Raquel Silva, Executive Director, Municipal Executives Association

## Blue Ribbon Panel on Transparency, Fairness, and Accountability in Law Enforcement

December 8, 2015

Chief Gregory Suhr  
San Francisco Police Department  
1245 3<sup>rd</sup> Street  
San Francisco, CA 94158  
Sent via email: [greg.suhr@sfgov.org](mailto:greg.suhr@sfgov.org)

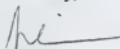
Dear Chief Suhr:

On behalf of the Blue Ribbon Panel on Transparency, Fairness, and Accountability in Law Enforcement ("Panel"), thank you for your response letter dated November 30, 2015. I appreciate that you welcome the Panel's review and I hope to work collaboratively, both while the Panel conducts its review and in considering any recommendations the Panel presents in its final report. I invite you to contact me if any further questions or concerns should arise.

The Panel also appreciates the independent and proactive efforts the San Francisco Police Department is taking to address racial bias, procedural justice, and transparency concerns. I encourage you to keep me updated on these efforts for the Panel's consideration. I trust you also recognize the value of the Panel's independent inquiry, which is intended to provide a comprehensive and impartial perspective.

Thank you for producing certain documents in response to the Panel's courtesy request. We will be submitting a formal Public Records Act request later this week. With respect to interviews, the Panel will approach officers directly to request their voluntary participation. We will certainly take account of any request by a police officer regarding his or her organized labor representative. I hope that you and other members of the SFPD Command Staff will choose to share your perspectives with the Panel, and I will reach out soon to attempt to schedule those interviews.

Sincerely,



Anand Subramanian  
Executive Director  
Blue Ribbon Panel on Transparency, Accountability and Fairness in Law Enforcement

c: Lieutenant Christopher Woon, San Francisco Police Department  
Jerome Roth, Munger, Tolles, and Olson  
Suzy Loftus, President, San Francisco Police Commission  
George Gascón, District Attorney, San Francisco District Attorney's Office  
Micki Callahan, Director, San Francisco Department of Human Resources  
Joyce Hicks, Director, San Francisco Office of Citizen Complaints

# Appendix F:

## Proposed Bulletin from Panel to SFPD

### INFORMATION FROM THE BLUE RIBBON PANEL

This sheet provides basic information regarding the Blue Ribbon Panel on Fairness, Accountability, and Transparency in Law Enforcement ("Panel").

The San Francisco District Attorney's Office established the Panel last year to investigate and report on whether there exist issues related to bias in the San Francisco Police Department ("SFPD") in light of the ongoing text messaging cases. **The Panel is not investigating the text messaging cases themselves.**

The Panel is made up of three prominent former judges from outside San Francisco who have been instructed to act **independently from the District Attorney**, and who are working with counsel from a number of well-known San Francisco private law firms with **no ties to the District Attorney's Office**. The work of the judges and the law firms is being conducted on a pro bono basis.

In connection with its investigation, the Panel is very interested in hearing the views of SFPD officers. It would like to hear those views **unfiltered by influence of any other groups or individuals**, including but not limited to the SFPD, the Chief of Police, the Police Commission, the POA, or the OCC. The goal of the Panel and the law firms counseling it is to get truthful, unvarnished information from officers and from official representatives of those groups as well as from others in the community so that it can draw conclusions and make recommendations based on a full and fair-minded review of the facts.

You may be asked to sit for an interview with one of the law firms helping the Panel with its investigation. **The interview is entirely voluntary**: the Panel, as duly established by the District Attorney, cannot and does not seek to compel the testimony or appearance of witnesses.

**The interview also is not disciplinary in nature and does not relate to the personal conduct or performance of the individual being interviewed.** The Panel has no disciplinary powers. Instead, the Panel is focusing on broader, department-wide issues.

If a witness desires, the interview may be conducted in a confidential manner and the witness's name will not be used in the Panel's report.

The interview will be conducted at a time and place convenient to the officers while they are off duty.

The Panel hopes that you will agree to be interviewed to assist it in looking into the important issues at stake.

## Appendix G

**SAN FRANCISCO POLICE DEPARTMENT  
PUBLIC RECORDS REQUEST FORM**  
(San Francisco Sunshine Ordinance, Administrative Code §67.1 et. seq.)

**(DO NOT USE THIS FORM TO REQUEST INCIDENT REPORTS  
OR TRAFFIC COLLISION REPORTS)**

Date: 14/16/15

San Francisco Police Department

Media Relations Unit  
850 Bryant Street, Room 553  
San Francisco, CA 94103  
FAX: (415) 553-9229

Legal Division  
850 Bryant Street, Room 575  
San Francisco, CA 94103  
FAX: (415) 553-7307

Requester Name: Blue Ribbon Panel on Transparency, Fairness, Accountability in Law Enforcement

Address: 40 Serene C. Roth, Mungo, Teller & Olson LLP

City / State / Zip: 560 Mission St., 27<sup>th</sup> Fl., San Francisco, CA 94103

Telephone: 415- 512- 4010

Records Requested: (Please provide a reasonable description of the specific records)

Please See H. attached

Please use an additional page if more space is needed.

- I would like to inspect the records. Please advise me when the records are available for inspection at a location designated by the Police Department.
- I would like to pick up copies of the records from Police Department Headquarters. Please advise me when the records are ready. I understand that I must pay for the copies before the Department will release them to me.
- Please mail the records to the address above. I understand that I must pay for postage and the copies before the Department will send the records.
- If less than 10 pages, please fax the documents to: \_\_\_\_\_. If the records cannot be faxed, please use the alternative method checked above.
- If the records are in electronic form, and if consistent with Police Department procedures, please email the records to the following email address:  
SF Blue Ribbon Panel @mtb.com. If the records cannot be sent electronically, please use the alternative method checked above.

MUNGER, TOLLES & OLSON LLP

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TWENTY-SEVENTH FLOOR  
SAN FRANCISCO, CALIFORNIA 94105-2907  
TELEPHONE (415) 512-4000  
FACSIMILE (415) 512-4077

388 SOUTH GRAND AVENUE  
LOS ANGELES CALIFORNIA 90071-1880  
TELEPHONE (213) 683-9100  
FACSIMILE (213) 687-3702

Writer's Direct Contact  
(415) 512-4010  
(415) 644-6910 FAX  
iscreams.rocky@msn.com

**VIA FACSIMILE AND U.S. MAIL**

San Francisco Police Department  
Legal Division  
1245 Third Street  
Fourth Floor  
San Francisco, California 94158

**Re: Public Records Request**

To Whom It May Concern:

This letter serves as a public records request on behalf of the Blue Ribbon Panel on Transparency, Fairness, and Accountability in Law Enforcement. Please produce:

1. All minutes of SFPD Brady Committee / Brady Unit meetings.
  2. List of all officers on SFPD's Brady list, including race and gender, and when each was placed on the list broken down by:
    - a. Active officers in the field / active officers out of the field (e.g. working desk jobs);
    - b. Inactive officers (i) terminated; (ii) retired or (iii) other;
  3. List of all officers terminated for misconduct since 2010 (with names redacted if necessary).

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San Francisco Police Department

December 16, 2015

Page 2

4. All 849B forms from 2010-2015.
5. Arrest data underlying SFPD "Racial Profiling Assessment: Arrests and Traffic Stops" document;
  - a. The same categories of data underlying SFPD "Racial Profiling Assessment: Arrests and Traffic Stops" document for 2015.
6. All documents from 2010-2015 related to any training that police officers receive, including how often police officers are required to attend such training, pertaining to:
  - a. Any form of bias;
  - b. Community policing, relationship-based policing; interaction with community members; interaction with minority community members; language and cultural competency; community sensitivity; and related issues;
  - c. Use of force, de-escalation, and conflict resolution;
  - d. Use of firearms;
  - e. Interactions with youth and interactions with people with mental health issues;
  - f. Procedural justice; or
  - g. *Brady v. Maryland*.
7. All documents from 2010-2015 related to any training that police officers receive at the academy, including instruction syllabi, pertaining to any subject identified in request 6(a)-(g) above.
8. Any records of attendance or completion of training (e.g. sign-in sheets) on the subjects identified in request 6(a)-(g) above.
9. All statistics related to crime clearance and minority victims / incident reporters, including, but not limited to:
  - a. All guidelines, orders, studies, treatises and reference materials reviewed or relied upon in calculating crime clearance rates;
  - b. All guidelines, orders, studies, treatises and reference materials reviewed or relied upon in determining the methodology for calculation of crime clearance rates;

MUNGER, TOLLES & OLSON LLP

San Francisco Police Department

December 16, 2015

Page 3

- c. All statistics, data and reports that discuss, refer or relate to crime clearance rates;
  - d. All statistics, data and reports that discuss, refer or relate to the race, gender or sexual orientation of victims or incident reporters for Part 1 Crimes; and
  - e. Any data correlating crime clearance rates with the 5 race and 19 ethnicity categories that the SFPD committed to using in 2012;
  - f. Clearance data for arrests since 2010 with race of victim and suspect identified;
  - g. Calls for service by police district from 2010 to present.
10. List of all referrals to IAD since 2010 broken down by IAD Criminal and IAD administrative.
- a. List of all referrals sent to Chief and *Brady* committee with officer race and gender identified and conduct alleged (with names redacted);
  - b. Logs of cases brought to IAD, including date referred and closed.
11. All documents sufficient to demonstrate the number of officers investigated each year (2010-2015) by IAD including the number of officers investigated by the IAD Criminal Division and the number of officers investigated by the IAD Administrative Division and the number of officers terminated as a result of an IAD investigation.
12. All documents sufficient to show the number of sustained IAD cases 2010-2015.
13. All procedural guidelines governing Internal Affairs proceedings.
14. All IAD complaints of biased policing 2010-2015.
15. Documents sufficient to show the number of bias complaints reviewed by the Chief and *Brady* committee since 2010.
16. All documents related to hiring policies and officer recruiting from 2005-2015, including, but not limited to:
- a. Announcements and advertisements for recruits;
  - b. Any lists of publications/organizations where announcements/advertisements are placed;
  - c. Any policy statements regarding hiring practices and any documents explaining the changes between the policies over time;

MUNGER, TOLLES & OLSON LLP

San Francisco Police Department

December 16, 2015

Page 4

- d. Recruitment Unit's policies/procedures for hiring LGBT, women, and or individuals of color;
- e. Any audits or assessments of the effectiveness of recruiting tactics;
- f. Statistics regarding the number of applicants hired (2005-2015) including data regarding racial makeup of applicants and hires;
- g. Data regarding applicants to the department with race, gender and sexual orientation and education level listed
- h. Data on the makeup of each recruitment class since 2010, including race, gender, sexual orientation
- i. Any internal reports/documents concerning problems/employee concerns with the recruiting or hiring process;
- j. Policies and procedures governing the referral process, including the bonus structure for the referral program;
- k. Statistics on the number of referrals each officer has made and the percentage of referrals that become SFPD officers;
- l. Statistics on the number of officers that have a family member in the department
- m. Statistics/documents on recruitment campaign goals over time;
- n. Policies and procedures governing the Accelerated Police Hiring Program and Accelerated Selection Process, including how officers are selected for this program;
- o. Statistics concerning gender, race, and minority group identification with officers selected to participate in the Accelerated Police Hiring Program and Accelerated Selection Process;
- p. Statistics concerning number of officers in the Accelerated Police Hiring Program and Accelerated Selection Process who became SFPD officers, broken down by gender, race, identification with minority classification;
- q. PowerPoint presentation and any other materials provided to police officer candidates during the hiring process;
- r. Any analyses of the promotion exam;

MUNGER, TOLLES & OLSON LLP

San Francisco Police Department  
December 16, 2015  
Page 5

- s. Guidelines for secondary criteria considered for promotion;
  - t. Statistics about the minority makeup of the police officer candidates who enter field training;
  - u. Statistics about the minority makeup of the police officer candidates that complete field training;
  - v. Any and all Police Academy training manuals from 2011-2015; and
  - w. Any documents or other materials addressing the factors included in background checks for potential recruits.
17. All Department Bulletins issued from 2010-present.
18. Any documents or other materials recording write-ups issued to recruits/trainees cited for failing to follow "officer safety" protocol when encountering citizens on the street.
19. All statistical data regarding hiring, promotion, discipline, retention and terminations, including but not limited to Personnel Orders (2010-2015) and HRMS Data (2010-2015).
20. Any documents/policy statements that are used to assess the level of discipline the Chief imposes on officers or that guide or bind his discretion in imposing discipline.
21. Any SFPD guidance regarding or interpretation of disciplinary policies.
22. List of all personnel assigned to IAD 2010-2015, including descriptions of each's responsibilities within the IAD unit.
23. Any internal audits or assessments of the IAD or Office of Citizen Complaints.
24. Any internal audits or assessments of the effectiveness of disciplinary measures.
25. Names of all SFPD personnel who conducted the internal investigation that followed the discovery of the text messages involved in the text message scandal.
26. All depositions of SFPD personnel from the *Rain O. Daugherty v. City and County of San Francisco*, Case No. CPF-15-514302.
27. All documents related to the SFPD's internal investigation of the text message scandal, including relevant interview transcripts, recordings, and/or memos.
28. All text messages, email messages, and other documents regarding the investigation of the texting incidents.

MUNGER, TOLLES & OLSON LLP

San Francisco Police Department  
December 16, 2015  
Page 6

29. All findings, conclusions, and/or recommendations that followed from the internal investigation of the texting incidents.
30. Documents sufficient to show the identity of any and all SFPD employees who reviewed Judge Charles Breyer's March 12, 2014 protective order in the federal criminal case No. 3:14-cr-00102 in the U.S. District Court for the Northern District of California.

Per departmental policy<sup>1</sup> and Administrative Code § 76.26,<sup>2</sup> if a responsive record contains both exempt and non-exempt information, please redact the exempt material and make the remainder of the record available. Thank you for your prompt attention to this request.

Sincerely,



Jerome C. Roth  
Counsel to the Blue Ribbon Panel on Transparency, Fairness, and Accountability in Law Enforcement

---

<sup>1</sup> See <http://sf-police.org/index.aspx?page=4354#disclosure>

<sup>2</sup> "No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by Section 67.27 of this Article."

# Appendix H

## SUNSHINE ORDINANCE TASK FORCE



City Hall  
1 Dr Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689  
Tel. No. (415) 554-7724  
Fax No. (415) 554-7854  
TTD/TTY No. (415) 554-5227

### ORDER OF DETERMINATION April 13, 2016 (Updated)

#### DATE DECISION ISSUED (March 2, 2016)

CASE TITLE – Jerome Roth on behalf of the Blue Ribbon Panel on Transparency, Accountability and Fairness in Law Enforcement v. San Francisco Police Department.  
(File No. 16003)

#### FACTS OF THE CASE

On January 12, 2016, Jerome Roth (Complainant) made a complaint alleging that the San Francisco Police Department (SFPD) violated Administrative Code (Sunshine Ordinance), Sections 67.21 and 67.27, by failing to respond to a request for public records in a timely and/or complete manner and failing to provide justification for withholding information.

#### HEARING ON THE COMPLAINT

On March 2, 2016, the Sunshine Ordinance Task Force (Task Force) heard the matter.

Nicholas Fram, representing the Complainant, provided an overview of the complaint and requested the Task Force to find violations. Mr. Fram stated that the Police Department had failed to provide a records production timeline, despite repeated requests that it do so, and that the Complainant disagrees with the authority to withhold certain documents. There were no speakers in support of the Complainant. Sgt. Mara Ciriaco and Sgt. Stacy Youngblood, Police Department (Respondent), presented the department's position. Sgt. Ciriaco stated that due to the voluminous nature of the request, additional time is needed to comply with the request for records. There were no speakers in support of the Respondent. A question and answer period followed. The Complainant provided a rebuttal.

#### FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the Task Force finds that there was a violation of Administrative Code (Sunshine Ordinance), Sections 67.21(a)(c) and 67.27.

## DECISION AND ORDER OF DETERMINATIONS

The Sunshine Ordinance Task Force finds that the San Francisco Police Department violated Administrative Code (Sunshine Ordinance), Sections 67.21(a)(c) and 67.27, by failing to respond to a public records request in a timely manner, failing to provide sufficient assistance to the requester in identifying the existence, form and nature of any records or information maintained, and failing to provide appropriate justify for withholding certain records.

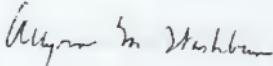
**The Motion PASSED by the following vote:**

Ayes: 7 - Rumold, Eldon, Wolf, Pilpel, Fischer, Hyland, Washburn  
Noes: 0 - None  
Absent: 3 - Chopra, Haines, Hinze

The Task Force requested that Mr. Fram prioritize the list of requested records. In addition, the Task Force requested the Police Department to provide a timeline for producing the remainder of the requested records by Friday, March 4, 2016. The Task Force suggested that it may be advisable to request the Supervisor of Records to review whether or not certain records were properly withheld as the Task Force has not reviewed the documents in question.

Chair Washburn referred the matter to the Education, Outreach and Training Committee's March 14, 2016, meeting to determine if the Police Department has complied with the Task Force's request. (*The Complaint request a postponement of the March 14, 2016, meeting.*)

*(Update – On April 6, 2016, the Task Force reviewed the status of the complaint and referred it to the April 19, 2016, meeting of the Compliance and Amendments Committee.)*



Allyson Washburn, Chair  
Sunshine Ordinance Task Force

- c.     Jerome Roth (Complainant)  
Nicholas Fram (Complainant)  
Lt. Kathryn Waaland, Police Department  
Sgt. Mara Ciriaco, Police Department  
Sgt. Stacy Youngblood, Police Department

# Appendix I

## **MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN FRANCISCO DISTRICT ATTORNEY'S OFFICE AND THE SAN FRANCISCO POLICE DEPARTMENT REGARDING THE INVESTIGATION OF OFFICER-INVOLVED SHOOTINGS, IN-CUSTODY DEATHS, AND USE OF FORCE INCIDENTS**

### **INTRODUCTION**

With the signing of this Memorandum of Understanding, the Office of the San Francisco District Attorney and the San Francisco Police Department embark upon a new and radically different protocol to ensure public trust, accountability, and transparency. Henceforth, the Office of the San Francisco District Attorney (SFDA) shall be the primary criminal investigative agency for all law enforcement officer-involved fatal incidents and significant or suspected excessive uses of force occurring in the City and County of San Francisco. The SFDA shall direct the resources of the San Francisco Police Department (SFPD) as needed in furtherance of these investigations.

### **RATIONALE**

Ethical, effective policing requires the trust and consent of the public. Ethical, effective policing requires that police and the public each see the other as having an equal right to safety and dignity. When police fail to treat the public as equal persons or when the public sees the police as threats rather than guardians, public trust is broken, public and police safety are threatened, and police legitimacy is lost.

The SFDA, the SFPD, and the people of San Francisco all recognize that peace officers will sometimes have to use force – up to and including deadly force – as they perform a difficult and often dangerous job. That job, however, is made more difficult and dangerous when trust in the police is eroded by uses of force the public perceives as illegitimate.

The SFPD needs the trust of the people to prevent crime, identify and apprehend offenders, and ensure that interactions between police and the public are as safe as possible for all parties. The SFDA must honor the trust of the people by holding all parties legally accountable.

The SFPD and the SFDA understand that the public can no longer be expected to trust a criminal investigation of a law enforcement officer's use of deadly or alleged excessive force led by that officer's employing agency, or by a neighboring or allied police agency. Even when the investigating agency does everything honorably, thoroughly and objectively, their findings will not be believed by large sections of the public. They will be seen as the police protecting their own. To establish and maintain public trust, the use of force by police officers must be subject

to thorough examination by a neutral party: one that understands and upholds the role of law enforcement, but that is separate from any police or sheriff's department.

As the chief law enforcement officer for the City and County, the District Attorney bears responsibility for bringing charges against any persons who commit crimes in San Francisco, and pursuing justice for all. Therefore, the office of the San Francisco District Attorney (SFDA) shall be the primary criminal investigative agency for all officer-involved fatal incidents and significant uses of force (as defined below under "Implementation"). The SFDA shall direct the resources of the SFPD in these criminal investigations. The SFDA will conduct additional investigation, independent of the SFPD, and engage the services of other investigative agencies as necessary.

While an employing law enforcement agency may have the responsibility in an officer-involved incident to conduct an administrative investigation to determine if departmental policies were followed and appropriate tactics were used, the SFDA's criminal investigation shall be independent of any departmental administrative investigation. The criminal investigation shall be led by the newly-established Criminal Justice Integrity Team (CJIT) of the SFDA.

The purpose of the SFDA CJIT is to investigate and prosecute cases of law enforcement officers who violate the Fourth and/or Fourteenth Amendment rights of individuals. The SFDA CJIT will handle all officer-involved shootings, in-custody deaths, and cases of on-duty excessive use of force. The unit will also be responsible for investigating and remedying colorable claims of factual innocence. This will include cases discovered through the SFDA's internal look back process after misconduct allegations are discovered, as well as cases brought externally from individuals. This MOU between the SFPD and SFDA, however, does not address the full work of the CJIT and covers only the incidents described below.

## **INVESTIGATION OF OFFICER-INVOLVED SHOOTINGS, IN-CUSTODY DEATHS AND USE OF FORCE**

### **(a) Covered Officers.**

(1) For the purposes of this Memorandum, the term "officer" shall mean any law enforcement officer, regardless of employing agency, including but not limited to municipal police officers, deputy sheriffs, highway patrol officers, and any other county, state or federal agents.

### **(b) Covered Incidents.**

(1) For the purposes of this Memorandum, the term "Covered Incident" shall mean the following: Any incident which occurs in the City and County of San Francisco where: (i) an officer, on or off-duty, shoots and injures or kills any person; (ii) an officer, on or off-duty,

intentionally discharges a firearm at any person; (iii) an individual dies while in the custody or control of a law enforcement officer or agency, including deaths that result from arrest, detention, or any law enforcement application of force intended to affect an arrest or detention or to subdue or apprehend any person, including foot and vehicle pursuits; (iv) an on-duty officer uses a level of force likely to produce great bodily injury or death; or (v) there is a reasonable suspicion that an on-duty officer has used excessive force.

(2) The term "Covered Incident" shall NOT include the following: (i) negligent firearm discharges in which no person is struck; (ii) intentional shootings of animals; and (iii) incidents that occur outside the borders of the City and County of San Francisco, including incidents which occur at the San Francisco International Airport and the San Francisco Sheriff's Department custodial facility in San Bruno.

**(c) Notification Requirements.**

(1) The SFPD shall notify the SFDA of all Covered Incidents. For all officer-involved shootings and in-custody deaths, the SFPD shall immediately notify the SFDA CJIT. In no event shall this notification be made later than ten (10) minutes after the notification of the Covered Incident to SFPD's communications department (currently referred to as DOC). For all other Covered Incidents, DOC shall notify the SFDA CJIT as soon as DOC, Internal Affairs, or any SFPD supervisor becomes aware that either an on-duty officer has used force other than a firearm likely to cause great bodily injury or death, or there is a reasonable suspicion a peace officer has used excessive force.

(2) At the time of notification, the SFPD shall provide the SFDA CJIT with a brief summary of all the facts known at the time, including (if known): the number of officers and other persons involved in the incident; the extent of injuries to any party; the incident location(s) and any other locations to which SFPD personnel have been deployed (including hospitals, command posts, and station houses where interviews are being or are to be conducted); any other relevant information communicated to SFPD responding personnel.

(3) At the time of notification, the SFDA CJIT shall determine what SFDA resources will be deployed to take command of the incident.

(4) Nothing in this section shall affect the obligation and ability of the SFPD to deploy its resources, including directing the response of uniformed, plainclothes, investigative, forensic and supervisory/command personnel, as needed. However, SFPD shall not commence other than preliminary investigative efforts necessary to preserve evidence and public safety until the arrival of the SFDA CJIT personnel and at their direction.

**(d) Protocol for Investigation of a Covered Incident.**

(1) Pending the arrival of the SFDA CJIT, the SFPD shall be responsible for securing the location and all physical evidence, and locating and identifying witnesses.

(2) Immediately upon their arrival on scene, the SFDA CJIT shall be briefed about the incident by the ranking member of the SFPD criminal investigative team, or his or her designee. The briefing shall consist of all relevant information known at that time, including, but not limited to: (i) a factual summary based on initial statements from officers, witnesses, suspects, and any other sources of information (including video, digital and other physical evidence); (ii) the numbers and current locations of all involved officers, civilian witnesses and other involved parties, and the medical conditions of any injured parties; (iii) the status of the preliminary investigation, including any outstanding subjects, additional scenes, and significant questions or concerns; and (iv) a "walk-through" of the scene, once secure, so that the SFDA CJIT team may view firsthand all physical evidence. Information shall not be withheld unless obtained via compelled statements.

(3) The SFDA CJIT, having been briefed, shall direct the further investigation. To the degree possible, the SFDA CJIT shall communicate those directions through the ranking member of the SFPD and/or the supervisors of the various SFPD units assigned to the investigation (including, but not limited to, Patrol, Crime Scene Investigations, and Investigations).

(4) The SFDA CJIT shall not direct SFPD's administrative investigation, the administrative investigation of any other involved agency, or the investigation of the Office of Citizen Complaints, except to ensure that none of those investigations interferes with the primary criminal investigation.

(5) Because the SFPD commands significantly greater resources than the SFDA, it is understood that some criminal investigative work by SFPD may occur without the direct and immediate involvement of the SFDA CJIT, especially as necessary to identify and safeguard evidence and witnesses. The resources, expertise and professionalism of SFPD shall be brought to bear in these investigations as in all investigations, except that the SFDA CJIT shall have primary responsibility for the investigation of all Covered Incidents. This responsibility is conferred to the SFDA CJIT upon notification of an incident, and continues until the conclusion of the investigation.

(6) The SFDA CJIT may request the SFPD to lead the investigation into any underlying crimes involving non-law enforcement personnel, including crimes allegedly committed by the person(s) upon whom force was used.

(7) Unless requested by the SFDA CJIT, the SFPD shall conduct no separate criminal investigation into any Covered Incident. The SFPD maintains the right and responsibility to conduct an administrative investigation in cases involving SFPD personnel.

**(e) Interviews of Civilian Witnesses.**

(1) The SFDA CJIT shall have the opportunity to be present at and lead the interviews of all civilian witnesses, both in the immediate aftermath of an incident and throughout the ongoing investigation.

(2) Notwithstanding Section (e)(1) above, it is understood that the need to have SFDA CJIT personnel present for civilian witness interviews may have to be weighed against the need to obtain critical information in a timely manner and to avoid excessive detention of civilian witnesses. If SFPD must interview civilian witnesses in the absence of SFDA CJIT personnel, SFPD shall conduct only interviews of (i) canvass or elimination witnesses, (ii) witnesses to non-critical, pre-incident or post-incident events; and (iii) "earwitnesses" whose perceptions do not include critical information including commands, threats or other speech. In these cases, field notes, reports and/or recordings of these interviews shall be provided to the SFDA CJIT as soon as possible, and in no event later than 2 business days from the time of origination unless an agreement with the SFDA CJIT is obtained.

(3) Direct, percipient witnesses and witnesses alleging contradictory or controversial observations shall not be interviewed in the absence of SFDA personnel, except at the direction of the SFDA CJIT. This rule shall apply to interviews of Medical Examiner personnel, other medical and hospital personnel, and arrestees and detainees, including persons struck by gunfire or upon whom force was used.

(4) The SFDA CJIT may interview, or re-interview, civilian witnesses outside the presence of SFPD. The SFDA CJIT shall decide, in its sole discretion, whether to invite SFPD investigators to take part in the interviews of civilian witnesses.

**(f) Interviews of Law Enforcement Witnesses.**

(1) The SFDA CJIT shall lead the interviews of law enforcement witnesses and involved officers. The SFDA CJIT shall decide, in its sole discretion, whether to invite SFPD investigators to take part in the non-compelled interviews of officers.

(2) SFDA CJIT personnel shall not participate in, monitor, or receive any information from any compelled officer interview except with the approval of the District Attorney or Chief Assistant District Attorney.

**(g) SFPD Forensic and Investigative Work.**

(1) All investigative and forensic reports, writings and exhibits prepared or obtained by SFPD regarding a Covered Incident shall be provided to the SFDA CJIT as soon as possible and in no event later than 2 business days from the completion or receipt by SFPD.

(2) All other evidence obtained by SFPD regarding a Covered Incident shall be provided to the SFDA CJIT as soon as possible and in no event later than 2 business days from the receipt by SFPD.

(3) The SFDA CJIT may utilize outside agencies, including but not limited to the Federal Bureau of Investigation and the California Department of Justice, and/or private vendors, to collect, process, and/or analyze evidence.

**FINAL ACTION**

At the conclusion of the CJIT investigation, the SFDA will review and analyze all the evidence to determine whether the officer(s) acted lawfully. The crime charging standards are the same for peace officers as for civilians. The District Attorney's policies regarding crime charging are set forth in the California District Attorneys' Association Professionalism Manual, which states in part:

"The prosecutor should charge only if the four basic requirements are satisfied:

- 1) The prosecutor, based on a complete investigation and a thorough consideration of all pertinent facts readily available is satisfied that the evidence proves that the accused is guilty of the crime to be charged;
- 2) There is legally sufficient, admissible evidence of a corpus delicti;
- 3) There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime charged; and
- 4) The prosecutor has considered the probability of conviction by an objective fact finder and has determined that the admissible evidence is of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after hearing all the evidence available to the prosecutor at the time of charging and after considering the most plausible, reasonably foreseeable defense inherent in the prosecution evidence."

If no charges are filed, the District Attorney will issue a closing report summarizing the results of the investigation and analyzing the evidence. This report will address the question of whether or not there is proof beyond a reasonable doubt that an officer, deputy, or any other person committed a crime. It is not the purpose of the District Attorney's criminal investigation or

report to determine if any officer or deputy violated police policy or procedure, or committed any act that would be subject to civil sanctions.

This Memorandum of Understanding shall be effective upon the approval of both the District Attorney and the Chief of Police and shall remain in full force and effect until amended or superseded by another such Memorandum of Understanding or until terminated by one party after thirty days written notice directly to the District Attorney or the Chief of Police.

---

George Gascón, District Attorney

Date: \_\_\_\_\_

---

Greg Suhr, Chief of Police

Date: \_\_\_\_\_

# Appendix J

## San Francisco District Attorney's Office

### BRADY DISCOVERY OF LAW ENFORCEMENT EMPLOYEE MISCONDUCT

#### (INTERNAL POLICY)

4/21/10

#### INTRODUCTION

The following is an "internal" policy that addresses information in the actual possession of the District Attorney's Office as opposed to information contained in peace officer personnel files. In order to comply with our discovery obligations, procedures are necessary (1) to ensure that instances of law enforcement employee and expert witness misconduct and credibility issues that come to the attention of the District Attorney's Office are reviewed to determine if disclosure is required under *Brady v. Maryland* (1963) 373 U.S. 83, (2) to maintain a depository for such information, and (3) to ensure that deputy district attorneys know of the existence of such information regarding potential witnesses so that disclosure can be provided to the defense.

This policy includes information that may bear on the credibility of peace officer witnesses, as well as employees of law enforcement agencies and experts who may be witnesses in criminal cases. As explained below, some of the procedural protections contained in this policy are limited to peace officers and custodial officers, in light of the special legal obligations and protections regarding peace officer and custodial officer personnel records. (Evid. Code §§ 1043-1047; Penal Code §§ 832.5, 832.7.)

#### I. WHAT CONSTITUTES BRADY MATERIAL

A. The District Attorney is obligated to provide the defense in criminal cases with *exculpatory* evidence that is *material* to either guilt or punishment. (*Brady v. Maryland, supra*, 373 U.S. 83, 87.) Reviewing courts define "material" as follows: "The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." (*People v.*

*Roberts* (1992) 2 Cal.4th 271, 330.) "Exculpatory" means favorable to the accused. This obligation includes, "substantial material evidence bearing on the credibility of a key prosecution witness." (*People v. Ballard* (1991) 1 Cal.App.4th 752, 758.) Such impeachment evidence must disclose more than "minor inaccuracies." (*People v. Padilla* (1995) 11 Cal.4th 891, 929, overruled on other grounds, *People v. Hill* (1998) 17 Cal.4th 800, 823, fn 1.)

B. Impeachment evidence is defined in Evidence Code section 780 and CALJIC 2.20.

Examples of impeachment evidence that may come with *Brady* are as follows:

1. The character of the witness for honesty or veracity or their opposites. (Evid. Code §780(e).)
2. A bias, interest, or other motive. (Evid. Code §780(f).)
3. A statement by the witness that is inconsistent with the witness's testimony. (Evid. Code §780(h).)
4. Felony convictions involving moral turpitude. (Evid. Code §788; *People v. Castro* (1985) 38 Cal.3d 301, 314.) Discovery of all felony convictions is required regarding any material witness whose credibility is likely to be critical to the outcome of the trial. (Penal Code §1054.1(d); *People v. Santos* (1994) 30 Cal.App.4th 169, 177.)
5. Facts establishing criminal conduct involving moral turpitude, including misdemeanor convictions. (*People v. Wheeler* (1992) 4 Cal.4th 284, 295-297.)
6. False reports by a prosecution witness. (*People v. Hayes* (1992) 3 Cal.App.4th 1238, 1244.)
7. Pending criminal charges against a prosecution witness. (*People v. Coyer* (1983) 142 Cal.App.3d 839, 842.)
8. Parole or probation status of a witness. (*Davis v. Alaska* (1974) 415 U.S. 308, 319; *People v. Price* (1991) 1 Cal.4th 324, 486.)
9. Evidence undermining an expert witness's expertise. (*People v. Garcia* (1993) 17 Cal.App.4th 1169, 1179.)
10. Evidence that a witness has a racial, religious or personal bias against the

defendant individually or as a member of a group. (*In re Anthony P.* (1985) 167 Cal.App.3d 502, 507-510.)

C. The duty of disclosure applies even to completed cases. (*People v. Garcia* (1993) 17 Cal.App.4th 1169, 1179.) However, it does not apply to cases in which the defendant pled guilty or no contest. (*U.S. v. Ruiz* (2002) 536 U.S. 622.)

D. The government has no *Brady* obligation to "communicate preliminary, challenged, or speculative information." (*U.S. v. Agurs* (1976) 427 U.S. 97, 109, fn. 16.) However, "the prudent prosecutor will resolve doubtful questions in favor of disclosure." (*Id.* at p. 108.) See also, *Kyles v. Whitley* (1995) 514 U.S. 419, 439, which warns prosecutors against "tacking too close to the wind" in withholding evidence.

## II. RELATIONSHIP BETWEEN *BRADY* AND *PITCHESS*

A. Criminal defendants may seek disclosure of peace officer and custodial officer personnel records and complaints from the law enforcement agency pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 and Evidence Code sections 1042-1047. The *Pitchess* process operates in parallel with *Brady*. (*City of Los Angeles v. Superior Court (Brandon)* (2002) 29 Cal.4th 1, 14.) The availability of the *Pitchess* procedure does not always satisfy the obligation of the prosecution to provide material exculpatory evidence in the possession or constructive possession of the prosecution. For example, the District Attorney's Office has a discovery obligation as to exculpatory information in its actual possession that may not be included in the officer's personnel file.

B. In *Pitchess* motions, the prosecuting attorney shall request that the court issue a protective order against disclosure of the material in other cases pursuant to Evidence Code section 1045, subdivisions (d) and (e). (See *Alford v. Superior Court* (2003) 29 Cal.4th 1033.) The *Pitchess* procedure shall also apply to personnel records of peace

officers employed by the District Attorney's Office (i.e., DAI).

C. No discovery will be provided for any information in or from a law enforcement employee's personnel file without the court first examining the materials in-camera. If a deputy district attorney is aware of information in a peace officer or custodial officer's personnel file that may qualify for disclosure under *Brady*, the District Attorney's Office may file a motion for in-camera examination under *Brady* or *Pitchess*, or defense counsel may be invited to file a *Pitchess* motion.

D. If the deputy district attorney is aware of potential *Brady* material that was disclosed through a *Pitchess* hearing that is more than five years old, the District Attorney's Office may seek in-camera review of the materials to determine if disclosure is required.

E. At the present time, the District Attorney's Office has no legal duty to examine a peace officer's personnel file. It is the policy of the San Francisco District Attorney's Office to not seek to examine a peace officer's personnel file for *Brady* purposes.

### **III. PROCEDURE FOR REVIEW OF POTENTIAL *BRADY* INFORMATION**

A. Upon learning of any apparently credible allegation involving law enforcement employee or expert witness misconduct or credibility that may be subject to discovery under *Brady*, deputy district attorneys and district attorney investigators shall timely report this information to their immediate supervisor. For example, evidence of untruthfulness may come to light during a criminal trial, or from credible reports of other law enforcement employees based on sources other than personnel records. Such allegations must be substantial and may not be limited to a simple conflict in testimony about an event. The notification itself ultimately might be examined in-camera and/or be discovered to the defense, so carelessness in wording or premature conclusions are to be avoided. If and when such information is obtained, the District Attorney's Office will conduct a thorough analysis pursuant to the procedures outlined herein to determine if it is required to disclose the information pursuant to *Brady*.

B. Deputy district attorneys and district attorney investigators shall also advise their supervisors if they become aware of any of the following information regarding a law enforcement employee or expert witness:

1. Any information available to the attorney regarding the disclosures made pursuant to a *Pitchess* motion, and the existence of any protective or limiting order regarding future dissemination of the information. (See Evid. Code §1045(d) &(e).)
2. Criminal convictions of law enforcement employees.
3. Prosecutions initiated against law enforcement employees.
4. Rejections of requests for initiation of prosecution against law enforcement employees.
5. Any administrative discipline imposed against a law enforcement employee that may have a bearing on credibility.

C. Following receipt of such a report, the attorney or investigator's supervisor shall obtain all available information concerning the alleged misconduct, including the transcript of any testimony provided, and shall forward the materials to the *Brady* committee. The *Brady* committee is made up of the Chief of the Criminal Division, and the Managing Attorneys of Misdemeanors, Preliminary Hearings and General Litigation.

D. The *Brady* committee shall review and analyze the materials in light of applicable law. In some cases, it may be necessary and appropriate for the District Attorney's Office to obtain copies of additional court documents or police reports, or interview witnesses. However, absent extraordinary circumstances, the District Attorney's Office will not seek to interview the officer in question or other employees of the employing law enforcement agency.

E. The standard of proof for disclosure of information shall be the "substantial information" standard. Substantial information is defined as facially credible information that might reasonably be deemed to have undermined confidence in a later conviction

in which the law enforcement employee is a material witness, and is not based on mere rumor, unverifiable hearsay, or a simple and irresolvable conflict in testimony about an event.

F. Following the initial review and analysis described above, the *Brady* committee shall decide which of the following conclusions is appropriate: (1) the materials do not constitute *Brady* material (see paragraph G, below); (2) it appears that disclosure may be required under *Brady* (see paragraph H, below); or (3) further investigation, including interview of the officer in question or other employees of the employing law enforcement agency, should be undertaken by the employing law enforcement agency (see paragraph I, below).

G. If the *Brady* committee concludes that based on the initial review, it is clear that the materials do not constitute *Brady* material, the matter shall be closed.

H. If it appears that after the initial review that information regarding a peace officer may be *Brady*, the officer and the head of the employing law enforcement agency will be invited to provide written comments, objections and/or additional information that may bear on the decision of what information, if any, shall be provided. Given the need to provide prompt discovery to the defense in criminal cases, the opportunity to comment, object or provide information may of necessity be brief or non-existent.

1. The *Brady* committee shall evaluate all information received and make determinations or conclusions about what disclosure, if any, is appropriate. The committee's decision may include but are not limited to the following actions:
  - a. No further action based upon conclusion that no *Brady* material exists.
    - b. Discovery is required in a specific case only.
  - c. Discovery must be provided in additional cases in which the law enforcement employee is or was a material witness. In appropriate cases, a computer or other search of pending and/or past cases may be conducted so that counsel

- may be notified.
- d. In some cases, presenting the material to a judge for in-camera review may be an appropriate manner of resolving the discovery issue. (See Section IV, below.)
  - e. In rare cases, blanket notification to representatives of the Public Defender's Office, Conflicts Panel, and San Francisco Bar Association may be appropriate as a back-up form of notification in situations in which we cannot be confident that we have identified all of the affected parties. Such blanket notification shall be limited to a statement that *Brady* material may exist, with defense counsel to either contact the District Attorney's Office and request information regarding a specific identified case, or make a motion for disclosure. Blanket notification shall not be made of information obtained from peace officer personnel files.
2. If, after determining what disclosure, if any, is appropriate, and the information pertains to the credibility of a peace officer, the *Brady* committee shall send written notification to the officer and the head of the employing law enforcement agency and shall provide a copy of the materials regarding the officer that will be provided to the defense. (There might be instances where providing notice and material is not immediately practicable or possible and that decision will be made by the *Brady* committee, Chief of Special Prosecution, Chief Assistant, or the District Attorney.)
3. The peace officer shall then have an opportunity to respond in writing or request a meeting with the *Brady* committee whenever practicable to discuss the allegation and supporting materials. An attorney or any representative may accompany the officer to the meeting. In the event that the officer requests further time and no urgency exists to complete the evaluation, the *Brady* committee may extend the time for a written response or meeting for a reasonable period of time.
- I. In some cases, after the initial review, the *Brady* committee may conclude that the District Attorney's Office is not in possession of sufficient information to

conclude that conduct coming within *Brady* has occurred, but that further investigation is appropriate.

1. Absent extraordinary circumstances, the District Attorney's Office will not seek to interview the officer or other employees of the officer's agency. In such cases, the matter shall be referred to the employing law enforcement agency to conduct an investigation in accordance with the Public Safety Officers Procedural Bill of Rights.
2. If, after conducting this investigation, the employing law enforcement agency concludes that the complaint is unfounded, exonerated or not sustained (see Penal Code §§ 832.5, 832.7( c)), then disclosure may not be warranted because the information is "preliminary, challenged, or speculative." (*U.S. v. Agurs, supra.*)
3. If the employing law enforcement agency sustains the complaint, the District Attorney's Office shall, when the officer is a material witness in a case, make a motion under *Pitchess* for the court to examine the information in-camera and determine whether disclosure must be made under *Brady*. (See section IV, below.)
4. This policy shall not limit the authority of the District Attorney's Office to conduct criminal investigations.

#### IV. IN CAMERA REVIEW

- A. The District Attorney's Office may submit potential *Brady* evidence to a judge for in-camera review to determine if discovery to the defense is required. (*U.S. v. Agurs, supra*, 427 U.S. at p. 106; *U.S. v. Dupuy* (9<sup>th</sup> Cir. 1985) 760 F2d 1492, 1502.) The option of submitting the *Brady* material for in-camera review shall be considered in all cases, in consultation with the *Brady* committee.

B. If the *Brady* committee concludes that disclosure of material regarding a law enforcement officer may be required under *Brady*, the in-camera procedure shall be employed regarding the following:

1. Any materials contained in or obtained from a peace officer's personnel file, including information of which the District Attorney's Office became aware through *Pitchess* motion in a different case that was released without a protective order, or which is more than five years old.
2. Material regarding any incident that is the subject of a pending internal investigation by the employing law enforcement agency.
3. Material that is remote in time or has questionable relevance to the present case.
  4. Any potentially privileged materials.
5. When it is unclear whether the law requires the information to be disclosed.

C. Non-sworn employees of law employment agencies have a qualified right to privacy in their personnel files. (Cal. Const. Art. I, §1; *Board of Trustees v. Superior Court* (1981) 119 Cal.App.3d 516, 525-526.) Materials contained in the personnel file of a non-sworn employee shall be sought only with consent of the employee or when authorized by a court following in-camera review. (Evid. Code §§ 1040, 915(b); see *Johnson v. Winter* (1982) 127 Cal.App.3d 435.)

D. The District Attorney's Office shall, in appropriate cases, request that the court issue a protective order limiting or prohibiting the disclosure of the material in other cases.

E. If material regarding the credibility of a law enforcement employee is discovered to the defense pursuant to *Brady* after an in-camera review, the assigned deputy district attorney shall provide the *Brady* committee with a copy of the material ordered by the judge to be discovered. The *Brady* committee shall then include this material in the administrative file maintained for that law enforcement employee, unless the court has made a limiting order regarding disclosure of the material. If the materials to be disclosed include materials from an officer's personnel file, the fact that such materials were disclosed shall be noted, but neither the materials themselves nor the substance

of those materials shall be retained in the administrative file.

#### V. ADMINISTRATIVE FILES

- A. The materials reviewed and memoranda of conclusions reached shall be maintained in a separate *Brady* administrative file that will be maintained in a secure location in the District Attorney's executive office area. In those cases where the review determined the misconduct allegations are subject to discovery under *Brady*, the discoverable materials shall be included in the file for purposes of complying with discovery obligations in future cases.
- B. The information contained in these administrative files shall only be accessed for case-related purposes, and a written record shall be maintained as to the name of each employee who accesses the information and the case for which access was obtained. Only the *Brady* materials relevant to the particular case will be disclosed or otherwise discovered. The substance of the information in the administrative files shall not be included in any computerized database.
- C. Upon written request, the District Attorney's Office shall inform any law enforcement employee and/or the employing law enforcement agency whether or not a *Brady* administrative file exists regarding that employee. The employing law enforcement agency, and the affected law enforcement employee and/or his or her attorney or other representative, shall have the right to inspect the officer's *Brady* administrative file at a time mutually convenient to the parties after receipt of a written request for inspection. The District Attorney's Office retains the right to exclude from inspection materials protected by the attorney-client, work-product, deliberative process, official information privileges, or due to an on-going investigation..
- D. The District Attorney's Office should not retain confidential personnel records from other agencies, and shall not provide such records to the defense absent an in-camera review and a court order. (See Penal Code §832.7, subd. (a).) The employing law

enforcement agency is the appropriate custodian of these records.

#### VI. PROVIDING *BRADY* DISCOVERY TO THE DEFENSE

- A. A database list ("Brady List") has been created of law enforcement officers and employees including police lab experts for whom administrative files have been created based on possible *Brady* material, as described above. Because discovery of a *Brady* packet may be required for material witnesses on a pending case, deputy district attorneys must review the *Brady* list during case preparation to determine whether a *Brady* packet exists for each case in which the employee is subpoenaed by or will testify on behalf of the prosecution. The *Brady* list is accessible only to attorneys using a shared computer drive on a read-only basis and will only identify the individual by name, star number (if applicable), and employing agency.
- B. Disclosure of law enforcement employee misconduct is not required in a particular case if the evidence would not impact the employee's credibility in that case. For example, if the misconduct relates to a bias against a particular racial group, discovery may not be required in cases that do not involve members of that group. The *Brady* committee shall be consulted on all *Brady* issues regarding the credibility of law enforcement employees. If the assigned deputy district attorney is of the opinion that the *Brady* packet shall not be provided in a particular case, after consultation with the *Brady* committee, this decision shall be documented in the administrative file for that officer. If it is not clear whether disclosure is required in a particular case, the matter shall be submitted to the court for in-camera review.
- C. Where discovery to defense counsel regarding law enforcement employee or expert witness misconduct or credibility is required, it shall be made by the deputy district attorney prosecuting the case by providing the *Brady* packet in discovery. Disclosure to the defense is required before trial but is not required before the defendant enters a plea. Fulfillment of the prosecution's obligation to provide discovery

of *Brady* material is the sole responsibility of the individual deputy district attorney assigned to the case and shall be done without a defense request. In addition, the deputy district attorney **shall** note the date of disclosure on the blue sheet in his or her case file, and **shall** also retain a discovery receipt describing with particularity the materials discovered signed and dated by defense counsel in the file.

D. Whenever *Brady* material is provided to the defense in a case, the *Brady* committee shall place in the administrative file for that witness a memorandum documenting that discovery was provided, including the name of the case, case number, name of defense counsel and the date the *Brady* packet was sent to the discovery unit.

E. Deputy district attorneys reviewing declarations in support of arrest warrants and affidavits in support of search warrants shall consult the *Brady* list to determine if the declarant or affiant is an employee for whom the office has determined that *Brady* material must be provide. The attorney shall not approve the arrest warrant or search warrant unless it disclosed a summary of the *Brady* material so that the magistrate may consider it in assessing the credibility of the individual.

## **VII. IMMEDIATE DISCLOSURE REQUIREMENTS**

A. The nature of the constitutional obligation created by the *Brady* doctrine and the statutory time limits for trial and for providing of discovery in criminal cases will, in certain instances, require immediate disclosure to the defense of information in the possession of or known to the District Attorney's Office. In such instances, it may not be possible or feasible before the information is provided to the defense to conduct the full review procedure described above, to provide the law enforcement officer with advance notice or an opportunity to provide comments, objections, or additional information, or to provide a written response or meet with the *Brady* committee. In such cases, immediate disclosure may be made to the defense.

B. Immediate disclosure regarding peace officer information shall only be made under the following conditions:

1. With the express consent of the Chief Assistant District Attorney or District Attorney or, if neither of them can be contacted within the time during which discovery is required, with the express consent of the Chief of the Criminal Division or Chief of Special Operations, or
2. After the information is submitted to a judge in-camera, and the judge determines that disclosure is required.

C. In cases in which "immediate disclosure" is required, peace officers will be afforded a more abbreviated opportunity to be heard if it is feasible to do so. Once the decision to disclose has been made, both the department and the officer will be notified of the disclosure and will be provided with a copy of the materials disclosed.

#### VIII. ADMISSIBILITY OF EVIDENCE

Discovery and admissibility are different and the assigned deputy shall decide if admissibility of matters discovered is to be challenged.

# Appendix K

## San Francisco District Attorney's Office

### PROCEDURE FOR DISCLOSURE OF *BRADY* MATERIAL FROM LAW ENFORCEMENT PERSONNEL RECORDS

#### (EXTERNAL POLICY)

ISSUED: 8/13/2010

#### I. INTRODUCTION

##### A. Purpose of Policy

Repetitive requests by the District Attorney that the San Francisco Police Department (and other law enforcement agencies) check employee personnel files each time subpoenas are issued in a criminal case create unnecessary paperwork and personnel costs for both the Department and the District Attorney's Office. Instead, the San Francisco Police Department (SFPD) is adopting a procedure under which the Department advises the District Attorney's Office of the names of employees who have information in their personnel files that may require disclosure under *Brady*. (See SFPD Bureau Order No. 2010-01.) The District Attorney's Office then makes a motion under Evidence Code 1043 and 1045(e) for *in camera* review of the records, with respect to SFPD personnel.

With respect to other law enforcement agencies, until we develop procedures with them, we will continue to send letters to those agencies' legal contact (see attached list). Depending on their response, we may file Evidence Code 1043 and 1045 motions therein.

The purpose of this policy is to ensure that prosecutors and the defense receive sufficient information to comply with the constitutional requirements of *Brady* while protecting the legitimate privacy rights of law enforcement witnesses. This policy is not intended to create or confer any rights, privileges, or benefits to defendants or prospective or actual witnesses.

This External Policy is to be distinguished from the Office's Internal Policy. The External Policy governs *matters contained solely in law enforcement personnel files*, of which this Office is given limited notice, so that we can make the appropriate motion to the court to obtain case-specific information to use and provide to the defense. The Internal Policy governs *matters known to our own Office, and in our possession*, which contains sometimes significantly more materials, and which must be discovered in cases where such Internal listees may be witnesses.

#### **B. Organization of this External Policy**

The following sections will cover the procedure to follow for judicial review of those matters we are made aware of from SFPD personnel files, dealing with historical cases (post-judgments), procedures to follow regarding outside law enforcement agencies and what investigations or sources of information are specifically excluded from this external policy.

### **II. PROCEDURE FOR JUDICIAL REVIEW OF SFPD PERSONNEL RECORDS**

#### **A. *Brady* Material Defined**

The District Attorney is obligated to provide the defense in criminal cases with exculpatory evidence that is material to either guilt or punishment. (*Brady v. Maryland, supra*, 373 U.S. 83, 87.) Reviewing courts define "material" as follows: "The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." (*People v. Roberts* (1992) 2 Cal.4th 271, 330.) The evidence must raise "reasonable probability that, had [it] been disclosed to the defense, the result . . . would have been different [citation] – that is to say, a probability sufficient to undermine confidence in the outcome." (*In re Sassounian* (1995) 9 Cal. 4<sup>th</sup> 535, 543-544, n. 6.)

"Exculpatory" means favorable to the accused. This obligation includes "substantial material evidence bearing on the credibility of a key prosecution witness." (*People v. Ballard* (1991) 1 Cal.App.4th 752, 758.) Such impeachment evidence must disclose more than "minor inaccuracies." (*People v. Padilla* (1995) 11 Cal.4th 891, 929, overruled on other grounds, *People v. Hill* (1998) 17 Cal.4th 800, 823, fn. 1.)

The government has no *Brady* obligation to "communicate preliminary, challenged, or speculative information." (*United States v. Agurs* (1976) 427 U.S. 97, 109 fn. 16.) However, "the prudent prosecutor will resolve doubtful questions in favor of disclosure." (*Id.* at p. 108.) See also *Kyles v. Whitley* (1995) 514 U.S. 419, 439, which warns prosecutors against "tacking too close to the wind" in withholding evidence.

Examples of evidence that may constitute "*Brady* material" are as follows:

1. The character of the witness for honesty or veracity or their opposites. (Evid. Code § 780 (e).)
2. A bias, interest, or other motive. (Evid. Code § 780 (f).)
3. A statement by the witness that is inconsistent with the witness's testimony. (Evid. Code § 780 (h).)
4. Felony convictions involving moral turpitude. (Evid. Code § 788; *People v. Castro* (1985) 38 Cal.3d 301, 314.) Discovery of all felony convictions is required regarding any material witness whose credibility is likely to be critical to the outcome of the trial. (Penal Code § 1054.1 (d); *People v. Santos* (1994) 30 Cal.App.4th 169, 177.)
5. Facts establishing criminal conduct involving moral turpitude, including misdemeanor convictions. (*People v. Wheeler* (1992) 4 Cal.4th 284, 295-297.)
6. False reports by a prosecution witness. (*People v. Hayes* (1992) 3 Cal.App.4th 1238, 1244.)
7. Pending criminal charges against a prosecution witness. (*People v. Coyer* (1983) 142 Cal.App.3d 839, 842.)
8. Parole or probation status of a witness. (*Davis v. Alaska* (1974) 415 U.S. 308, 319; *People v. Price* (1991) 1 Cal.4th 324, 486.)
9. Evidence undermining an expert witness's expertise. (*People v. Garcia* (1993) 17 Cal.App.4th 1169, 1179.)
10. Evidence that a witness has a racial, religious or personal bias against the defendant individually or as a member of a group. (*In re Anthony P.* (1985) 167 Cal.App.3d 502, 507-510.)

### **B. *Brady* Material in Police Officer Personnel Files**

For purposes of SFPD Bureau Order No. 2010-01, potential “*Brady* material” in personnel files of police officers has been defined by the SFPD to include any of the following:

1. A sustained finding of misconduct that comes within the definition of *Brady* material set forth in Section II. A. A sustained finding of misconduct occurs when (1) if charges are filed at the Chief’s level, the Chief of Police finds a complaint to be sustained, and if there is an appeal to the Police Commission, the Commission has issued a decision on the appeal that finds a complaint to be sustained, or (2) if charges are filed with the Police Commission, the Police Commission finds a complaint to be sustained. If the SFPD has notified the District Attorney’s office of *Brady* information and the officer later successfully appeals the finding of misconduct to a court, the SFPD shall provide the District Attorney’s Office with a copy of the decision and the District Attorney’s Office will reevaluate the matter.

2. Charges of misconduct filed with the Police Commission, or sustained by the Chief and on appeal to the Commission, when the charged misconduct comes within the definitions of *Brady* material set forth in Section II.A, (i) if the officer resigns or retires after the charges are filed and before the misconduct case is decided, or (ii) if the officer is still active and likely will be called as a witness in a criminal case before the misconduct case is decided. If the complaint of misconduct is later not sustained, the SFPD shall inform the District Attorney’s Office and the District Attorney’s Office will reevaluate the matter.

3. Any arrest, conviction or pending criminal charge for a felony or moral turpitude offense.

### **C. *Brady* Material in Civilian Personnel Files**

For purposes of SFPD Bureau Order No. 2010-01, potential “*Brady* material” in personnel files of SFPD civilian employees has been defined by the SFPD to include any of the following:

1. Any finding of misconduct that comes within the definition of *Brady* material set forth in Section II.A. A finding of misconduct occurs when (1) the Chief of Police has found a complaint to be sustained or (2) if a grievance has been filed, the employee has exhausted all remedies provided by MOU that governs the employee and the complaint has

been sustained. If the SFPD has notified the District Attorney's office of *Brady* information and the civilian later successfully appeals the finding of misconduct to a court, the SFPD shall provide the District Attorney's Office with a copy of the decision and that the District Attorney's Office will reevaluate the matter.

2. Official charges of misconduct filed by the SFPD when the charged misconduct comes within the definition of *Brady* material set forth in Section II.A, (i) if the employee resigns or retires after the charges are filed and before the misconduct case is decided, or (ii) if the employee is still active and likely will be called as a witness in a criminal case before the misconduct case is decided.

3. Any arrest, conviction or pending criminal charge for a felony or moral turpitude offense.

#### **D. SFPD Procedure For Notifying District Attorney's Office**

The SFPD and the District Attorney's Office have adopted a procedure by which the SFPD informs the District Attorney's Office of the identity of officers and civilian employees who may testify as a material witness in a prospective or pending case and who have information in their personnel files that may require disclosure under *Brady*.

Upon the completion of an internal review within the SFPD, the Director of Risk Management or designee shall send a written memorandum to the Chief of the Criminal Division in the District Attorney's Office that states the following: "The San Francisco Police Department is identifying [name of employee, star number if applicable, and date of separation from the Department if not a current employee] who has material in his or her personnel file that may be subject to disclosure under *Brady v. Maryland* (1963) 373 U.S. 83."

#### **E. Confidentiality of Files**

All memoranda from the SFPD to the District Attorney's Office that identify an employee as having potential *Brady* material in his or her personnel file shall be considered confidential, shall be protected as a confidential personnel record, as official information, and by any other applicable privilege or legal protection, and shall be maintained in a secure file.

The SFPD is aware that the District Attorney's Office will create a list of SFPD employees who have potential *Brady* material in their personnel files. The list shall include only the name of the employee, star number, and date of separation from the SFPD if not a current employee, and not any other information. The list resides on a secure computer drive, accessible to Assistant District Attorneys, with a "read only" feature, precluding the copying, printing or transmission of the list (only the list administrators can alter any information on the list).

Assistant district attorneys must review the list during case preparation to determine whether a law enforcement employee who is subpoenaed by or who will testify on behalf of the prosecution is on the list. "Case preparation" refers to any hearing at which that witness may testify, including (but not exclusively) preliminary examination, motion to suppress, motion to revoke, and court/jury trial.

#### **F. Motion For *In Camera* Review**

When the District Attorney's office deems that a law enforcement officer, identified by the SFPD as having possible *Brady* material in their personnel file, is a material witness in a pending criminal case or intends to call that officer as a witness, the District Attorney shall make a "*Brady*" motion under evidence Code Sections 1043 and 1045(e) to the court for *in camera* review of the records. (See *Alford v. Superior Court, supra*, 29 Cal.4th at 1046, *Brandon, supra*, 29 Cal. 4<sup>th</sup> at p. 14 *United States v. Agurs, supra*, 427 U.S. 97, 106; *U.S. v. Dupuy* (9th Cir. 1985) 760 F.2d 1492, 1502). As to non-sworn employees, the request shall be made pursuant to Evidence Code sections 1040 and 915(b). (See *Board of Trustees v. Superior Court* (1981) 119 Cal.App.3d 516, 525-526; *Johnson v. Winter* (1982) 127 Cal.App.3d 435.) At the time of application, the defense, the involved employee and the employing law enforcement agency will be notified of the request for *in camera* review.

#### **G. Disclosure**

If following *in camera* review, the Court orders disclosure of personnel file information, disclosure of the information shall be made to all parties as ordered by the Court. The SFPD and District Attorney's Office will work with the Court on an efficient method for disclosure. The SFPD and District Attorney's Office will urge the Court to adopt a procedure under which all parties, the SFPD, the District Attorney's Office and the defense, receive the information at the same time in conjunction with a protective order. The prosecuting attorney shall request that the Court issue a

protective order against disclosure of the material in other cases pursuant to Evidence Code section 1045, subdivision (e). (See *Alford v. Superior Court, supra*, 29 Cal. 4<sup>th</sup> 1033.)

#### **H. File Control**

Upon completion of a criminal case, the District Attorney's Office shall return to the SFPD all material from employee personnel files obtained pursuant to this Procedure for Disclosure. The District Attorney's office shall not maintain a depository organized by officer name of information obtained from SFPD personnel files pursuant to *in camera* hearings. Instead, motions shall be made under *Brady* and Evidence Code sections 1043 and 1045(e) in each future case in which the officer is a material witness.

### **III. REVIEW OF HISTORICAL INFORMATION BY THE TRIAL INTEGRITY UNIT**

The SFPD has potential *Brady* material in its personnel files concerning officers and employees that relates to conduct that has occurred in the past and thus may impact closed criminal cases.

In order for the District Attorney's Office to satisfy any *Brady* obligation that may apply in closed criminal cases, the SFPD will provide the employee's name, star number if applicable, date of separation if not a current employee, and the following information. For conduct that has resulted in criminal arrest or conviction, the SFPD will provide the District Attorney with the relevant dates and description of the criminal conduct. For other types of misconduct, the SFPD will provide the District Attorney with the relevant dates.

The SFPD is aware that the District Attorney's Office will then take appropriate legal action to ensure that notice is given to all affected parties, including, but not limited to, filing a motion with the Court, giving written notice to a defendant's counsel of record, or giving written notice to the defense bar.

This historical review is being done by the San Francisco District Attorney's Office's Trial Integrity Unit (TIU). Should assistant district attorneys have questions concerning a closed criminal case, they should contact the managing attorney of the TIU or the Chief of their Division.

#### **IV. NON-SFPD PROCEDURES**

Assistant district attorneys preparing cases for any hearing shall consult the external list maintained on the shared computer drive against any witnesses they propose to subpoena; should any such proposed witnesses who are on the list be employed as law enforcement or civilian employees of a non-SFPD law enforcement agency, the assistant district attorney will access the list of legal contact information attached hereto (and updated regularly on the shared drive, 'S') and will immediately send a letter to the designated contact person for that agency asking that agency if the proposed witness has any *Brady* information for which a motion need be made to the Court. If that agency responds in the positive for any witness(es), the assistant district attorney shall notify the defense attorney in his/her upcoming trial/hearing, and make a *Brady/1043* motion to the Court.

#### **V. INVESTIGATIONS NOT COVERED BY THIS PROCEDURE**

##### **A. District Attorney's Authority Under Penal Code Section 832.7(a)**

Nothing in this Procedure for Disclosure shall apply to or in any way limit the District Attorney's authority pursuant to the exception set forth in Penal Code Section 832.7(a).

##### **B. Cases Covered by the SFDA Internal Policy**

The District Attorney's Office sometimes learns of potential law enforcement employee misconduct outside of the procedure described in Section II, above, or outside of an *in camera* review procedure. For example, evidence of untruthfulness may come to light during a criminal trial, or from credible reports of other law enforcement employees based on sources other than personnel records. The procedure in such cases is described in a separate memorandum ("Internal Policy").

# Appendix L

## APPENDIX

<b>BUREAU ORDER</b>		<small>SEARCH INDEX NUMBER</small> 2010-01
		<small>DATE ISSUED</small> 8/13/10
		<small>DATE APPROVED</small> [Redacted]
<b>SUBJECT:</b> <b>PROCEDURE FOR DISCLOSURE OF MATERIALS FROM LAW ENFORCEMENT PERSONNEL RECORDS IN COMPLIANCE WITH BRADY AND EVIDENCE CODES § 1043 ET SEQ</b>		
<small>ISSUED TO:</small> <b>ALL MEMBERS, OFFICE OF CHIEF OF STAFF</b>	<small>ISSUED BY:</small> <b>ASSISTANT CHIEF MORRIS TABAK</b>	
<p><b>I. LEGAL BACKGROUND</b></p> <p>A. Peace officer and civilian personnel records. Law enforcement personnel records are protected from disclosure by the statutory procedure required by Evidence Code Sections 1043-1047. (<i>Pitchess v. Superior Court</i> (1974) 11 Cal.3d 531; <i>Evid. Code §§ 1043-1047; Penal Code § 832.7.</i>) Additional important protections regarding personnel records are contained in the Public Safety Officers' Procedural Bill of Rights Act (Gov. Code §§ 3300 et seq.) and in the right to privacy under the California Constitution (Article I, § 1).</p> <p>B. Brady disclosures. The District Attorney has a constitutional obligation under <i>Brady v. Maryland</i> (1963) 373 U.S. 83 to provide criminal defendants with material exculpatory evidence, including substantial evidence bearing on the credibility of prosecution witnesses. In California, the statutory procedure for discovery of police officer personnel records under Evidence Code 1043-1047 operates "in parallel" with the prosecution's obligation under <i>Brady</i>. (<i>City of Los Angeles v. Superior Court (Brandon)</i> (2002) 29 Cal.4th 1, 14.) Like the defense, the prosecution has no automatic right to discovery of peace officer personnel files, but must make a motion under Evidence Code Sections 1043 and 1045(c). (<i>Afford v. Superior Court</i> (2003) 29 Cal. 4th 1033, 1046.) Otherwise, the "prosecutor does not have the right to possess and does not have access to confidential peace officer files." (<i>People v. Gutierrez</i> (2004) 112 Cal.App.4th 1463, 1475.)</p> <p>Repetitive requests by the District Attorney that the Department check employee personnel files of Department employees who may be witnesses create unnecessary paperwork and personnel costs for both the Department and the District Attorney's Office. Instead, the Department is adopting a procedure</p>		
<small>SFPD #27 (REV1)</small>		

**Bureau Order, continued:**

under which the Department advises the District Attorney's Office of the names of employees who have information in their personnel files that may require disclosure under *Brady*. The District Attorney's Office then makes a motion under Evidence Code 1043 and 1045 for *in camera* review of the records by the court.

C. **Brady disclosure process.** The Department and the District Attorney's Office have adopted a procedure by which the District Attorney's Office learns the identity of officers and civilian employees who may testify as a material witness in a prospective or pending case and who have information in their personnel files that may require disclosure under *Brady*. As set forth in Section IV.A., the District Attorney will file a *Brady* motion in that case to seek *In camera* review by the Court to determine if the personnel files contain *Brady* material. In response to the motion, the Department will gather *Brady* related personnel files and provide them to the Court. The Court will determine if the personnel files contain *Brady* material that must be provided to the defense. This approach reconciles a defendant's constitutional right to a fair trial with a law enforcement employee's right to confidentiality.

D. **District Attorney Policies.** This procedure works in conjunction with policies issued by the District Attorney regarding *Brady* material.

E. **District Attorney's Authority Under Penal Code Section 832.7(a).** Nothing in this Procedure for Disclosure shall apply to or in any way limit the District Attorney's authority pursuant to the exception set forth in Penal Code Section 832.7(a).

**II. BRADY MATERIAL DEFINED**

A. **Brady Material.** The District Attorney is obligated to provide the defense in criminal cases with exculpatory evidence that is material to either guilt or punishment. (*Brady v. Maryland, supra*, 373 U.S. 83, 87.) Reviewing courts define "material" as follows: "The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." (*People v. Roberts* (1992) 2 Cal.4th 271, 330.) The evidence must raise a "reasonable probability that, had [it] been disclosed to the defense, the result . . . would have been different [citation] – that is to say, a probability sufficient to undermine confidence in the outcome." (*In re Sassounian* (1995) 9 Cal. 4th 535, 543-544, n. 6.)

"Exculpatory" means favorable to the accused. This obligation includes "substantial material evidence bearing on the credibility of a key prosecution witness." (*People v. Ballard* (1991) 1

**Bureau Order, continued:**

Cal.App.4th 752, 758.) Such impeachment evidence must disclose more than "minor inaccuracies."

(*People v. Padilla* (1995) 11 Cal.4th 891, 929, overruled on other grounds, *People v. Hill* (1998) 17 Cal.4th 800, 823, fn. 1.)

The government has no *Brady* obligation to "communicate preliminary, challenged, or speculative information." (*United States v. Agurs* (1976) 427 U.S. 97, 109 fn. 16.) However, "the prudent prosecutor will resolve doubtful questions in favor of disclosure." (*Id.* at p. 108.) See also *Kyles v. Whitley* (1995) 514 U.S. 419, 439, which warns prosecutors against "tacking too close to the wind" in withholding evidence.

Examples of evidence that may constitute "Brady material" are as follows:

1. The character of the witness for honesty or veracity or their opposites. (Bvid. Code § 780 (e).)
2. A bias, interest, or other motive. (Bvid. Code § 780 (f).)
3. A statement by the witness that is inconsistent with the witness's testimony. (Bvid. Code § 780 (h).)
4. Felony convictions involving moral turpitude. (Bvid. Code § 788; *People v. Castro* (1985) 38 Cal.3d 301, 314.) Discovery of all felony convictions is required regarding any material witness whose credibility is likely to be critical to the outcome of the trial. (Penal Code § 1054.1 (d); *People v. Santos* (1994) 30 Cal.App.4th 169, 177.)
5. Facts establishing criminal conduct involving moral turpitude, including misdemeanor convictions. (*People v. Wheeler* (1992) 4 Cal.4th 284, 295-297.)
6. False reports by a prosecution witness. (*People v. Hayes* (1992) 3 Cal.App.4th 1238, 1245.)
7. Pending criminal charges against a prosecution witness. (*People v. Coyer* (1983) 142 Cal.App.3d 839, 842.)
8. Parole or probation status of a prosecution witness. (*Davis v. Alaska* (1974) 415 U.S. 308, 319; *People v. Price* (1991) 1 Cal.4th 324, 486.)

**Bureau Order, continued:**

9. Evidence undermining an expert witness's expertise. (*People v. Garcia* (1993) 17 Cal.App.4th 1169, 1179-80.)
  10. Evidence that a witness has a racial, religious or personal bias against the defendant individually or as a member of a group. (*In re Anthony P.* (1985) 167 Cal.App.3d 502, 507-510.)
- B. **Brady Material in Police Officer Personnel Files.** For purposes of this procedure, potential "Brady material" in personnel files of police officers shall include any of the following:
1. A sustained finding of misconduct that comes within the definition of *Brady* material set forth in Section II. A. A sustained finding of misconduct occurs when (1) if charges are filed at the Chief's level, the Chief of Police finds a complaint to be sustained, and if there is an appeal to the Police Commission, the Commission has issued a decision on the appeal that finds a complaint to be sustained, or (2) if charges are filed with the Police Commission, the Police Commission finds a complaint to be sustained. If the Department has notified the District Attorney's office of *Brady* information and the officer later successfully appeals the finding of misconduct to a court, the Department shall provide the District Attorney's Office with a copy of the court's decision and the District Attorney's Office will reevaluate the matter.
  2. Charges of misconduct filed with the Police Commission, or sustained by the Chief and on appeal to the Commission, when the charged misconduct comes within the definitions of *Brady* material set forth in Section II.A, (i) if the officer resigns or retires after the charges are filed and before the misconduct case is decided, or (ii) if the officer is still active and likely will be called as a witness in a criminal case before the misconduct case is decided. In either case, before the Department notifies the District Attorney's Office of the officer's name, the *Brady* Committee (described in Section III) must determine that the seriousness of the misconduct and strength of the evidence warrants notification under *Brady*. If the complaint of misconduct is later not sustained, the Department shall inform the District Attorney's Office and the District Attorney's Office will reevaluate the matter.
  3. Any arrest; conviction or pending criminal charge for a felony or moral turpitude offense.

**Bureau Order, continued:**

C. **Brady Material in Civilian Personnel Files.** For purposes of this procedure, potential "Brady material" in personnel files of Department civilian employees shall include any of the following:

1. Any finding of misconduct that comes within the definition of *Brady* material set forth in Section II.A. A finding of misconduct occurs when (1) the Chief of Police has found a complaint to be sustained or (2) if a grievance has been filed, the employee has exhausted all remedies provided by Memorandum of Understanding that governs the employee and the complaint has been sustained. If the Department has notified the District Attorney's Office of *Brady* information and the civilian later successfully appeals the finding of misconduct to a court, the Department shall provide the District Attorney's Office with a copy of the court's decision and the District Attorney's Office will reevaluate the matter.
2. Official charges of misconduct filed by the Department when the charged misconduct comes within the definition of *Brady* material set forth in Section II.A, (i) if the employee resigns or retires after the charges are filed and before the misconduct case is decided, or (ii) if the employee is still active and likely will be called as a witness in a criminal case before the misconduct case is decided. In either case, before the Department notifies the District Attorney's Office of the employee's name the *Brady* Committee must determine that the seriousness of the misconduct and the strength of the evidence warrants notification under *Brady*. If the complaint of misconduct is later not sustained, the Department shall inform the District Attorney's Office and the District Attorney's Office will reevaluate the matter.
3. Any arrest, conviction or pending criminal charge for a felony or moral turpitude offense.

**III. NOTIFICATION TO DISTRICT ATTORNEY**

A. SFPD procedure for identifying potential *Brady* Material. The Department may become aware of *Brady* material based on an internal administrative investigation, a criminal investigation, in response to a request for information from the District Attorney in a pending case, or otherwise. Before the Department identifies an officer or a civilian employee to the District Attorney's Office as having *Brady* material in his or her personnel file or otherwise, the following procedures shall occur:

**Bureau Order, continued:**

1. The Department shall create a synopsis identifying the employee, the conduct that may give rise to a *Brady* obligation to report, and the documents and information that potentially should be disclosed. The Department shall create a form that includes spaces for the synopsis, the Brady Committee's recommendation, a notation as to whether the employee has submitted any responsive information, and the Chief's determination.
  2. A "Brady Committee" shall meet, review the synopsis and recommend to the Chief of Police on the form whether disclosure of the employee's name should be made to the District Attorney. The Committee shall consist of the Assistant Chief of the Office of Chief of Staff, the Director of Risk Management, the head of the Legal Division, the Director of Staff Services, and the author of the synopsis. The Department shall retain a retired judge with criminal law experience to serve as a member of the Committee.
  3. Before making a recommendation to the Chief of Police, the *Brady* Committee shall send a letter to the affected employee to notify the employee that the Committee has determined that the employee's file contains evidence of conduct that may be *Brady* material. The letter shall provide the employee with an opportunity to submit written information within 15 calendar days of the date of the letter as to why the conduct identified in the letter does not constitute *Brady* material. Upon reasonable notice and during business hours, the employee shall have the opportunity to review the form created by the Department. The Committee shall review any information submitted by the employee before making a final decision on its recommendation. Any information submitted by the employee shall be noted on and appended to the form.
  4. The Committee shall forward the form containing its recommendation to the Chief of Police. The Chief or the Chief's designee shall approve or disapprove in writing on the form the disclosure of an employee's name to the District Attorney's Office.
  5. The form and all accompanying documentation, including any response by the employee, shall be placed in the employee's personnel file.
- B. SFPD procedure for notifying District Attorney's Office. Upon the completion of the internal review within the Department, the Director of Risk Management or designee shall send a written memorandum to the Chief of the Criminal Division in the District Attorney's Office that states the

**Bureau Order, continued:**

following: "The San Francisco Police Department is identifying [name of employee, star number if applicable, and date of separation from the Department if not a current employee] who has material in his or her personnel file that may be subject to disclosure under *Brady v. Maryland* (1963) 373 U.S. 83."

At the same time, the SFPD shall provide a copy of the written notification to the involved employee. The copy shall be appended to the form described in Section III.A., and as stated above, the form shall be placed in the employee's personnel file.

C. Confidentiality of Files. All Department internal documents that identify employees as having potential *Brady* material, including the form described in Section III.A above, any attachments and any correspondence to or from the employee or the employee's representative, shall be treated as confidential, protected as a confidential personnel record, official information, and by any other applicable privilege or legal protection and shall be maintained in a secure file.

All memoranda from the Department to the District Attorney's Office that identify an employee as having potential *Brady* material in his or her personnel file shall be considered confidential, shall be protected as a confidential personnel record, as official information, and by any other applicable privilege or legal protection, and shall be maintained in a secure file.

The Department is aware that the District Attorney's Office will create a list of Department employees who have potential *Brady* material in their personnel files. The list shall include only the name of the employee, star number if applicable, and date of separation from the Department if not a current employee, and no other information. The list resides on a secure computer drive, accessible to Assistant District Attorneys, with a "read only" feature, precluding the copying, printing or transmission of the list (only the list administrators can alter any information on the list).

**IV. PROCEDURE FOR JUDICIAL REVIEW IN OPEN CRIMINAL CASES**

A. Motion for *in camera* review. When the District Attorney's Office deems that a law enforcement officer, identified by the Department as having possible *Brady* material in their personnel file, is a material witness in a pending criminal case or intends to call that officer as a witness, the District Attorney shall make a "Brady" motion under Evidence Code Sections 1043 and 1045(e) to the court for *in-camera* review of the records. (See *Alford v. Superior Court, supra*, 29 Cal.4th at 1046; *Brandon, supra*, 29 Cal. 4<sup>th</sup> at p. 14; *United States v. Agurs, supra*, 427 U.S. 97, 106; *U.S. v. Dupuy* (9th Cir. 1985) 760 F.2d 1492, 1502.) As to non-sworn employees, the request shall be made pursuant to

SFPD 427 (REV 1)

**Bureau Order, continued:**

Evidence Code Sections 1040 and 915(b). (See *Board of Trustees v. Superior Court* (1981) 119 Cal.App.3d 516, 525-526; *Johnson v. Winter* (1982) 127 Cal.App.3d 435.) At the time of application, the defense, the involved employee and the employing law enforcement agency will be notified of the request for *in-camera* review.

**B. Handling of Personnel Files.** The Department shall handle *Brady* motions in the same manner as motions under Evidence Code 1043 and 1045(e). The Department shall supply the material from personnel files to the Court for *in camera* review. Until there is a court order for disclosure, the Department shall not disclose personnel file material to the District Attorney's Office or to any other party to the case. The Department shall permit the employee to inspect the personnel file material upon reasonable notice and during business hours.

**C. Disclosure.** If following *in camera* review, the court orders disclosure of personnel file information, disclosure of the information shall be made to all parties as ordered by the Court. The Department and District Attorney's Office will work with the Court on an efficient method for disclosure. The Department and District Attorney's Office will urge the Court to adopt a procedure under which all parties, the Department, the District Attorney's Office and the defense, receive the information at the same time in conjunction with a protective order. The prosecuting attorney shall request that the court issue a protective order against disclosure of the material in other cases pursuant to Evidence Code Section 1045, subdivisions (d) and (e). (See *Alford v. Superior Court, supra*, 29 Cal. 4<sup>th</sup> 1033.)

**D. File Control.** Upon completion of a criminal case, the District Attorney's Office shall return to the Department all material from employee personnel files obtained pursuant to this Procedure for Disclosure. The District Attorney's office shall not maintain a depository organized by officer name of information obtained from SFPD personnel files pursuant to *in-camera* hearings. Instead, *Brady* motions shall be made in each future case in which the officer is a material witness. In connection with each motion, the Department shall keep a record of the files produced for *in camera* review and the material ordered disclosed by the Court.

**V. HISTORICAL INFORMATION**

The Department has potential *Brady* material in its personnel files concerning officers and civilian employees that relates to conduct that has occurred in the past and thus may impact closed



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